

A. LEON HIGGINBOTHAM, JR.: "I FELT THAT JUSTICE
COULD OVERCOME ANYTHING."

LOUIS H. POLLAK†

His biographers will not have an easy time downsizing Leon Higginbotham's life to fit within the covers of a book. Leon is larger than life.

Leon's physical size, substantial though that is,¹ has least to do with it. What chiefly matters, of course, is the range of his achievement—primarily as a federal judge for twenty-nine years—but also as a scholar and a teacher, and as an influential trustee both of Yale and of Penn. Significant also is Leon's role as counsellor—not only to world leaders such as Lyndon Johnson and Nelson Mandela—but also to ordinary people with ordinary problems which are for them no less intractable than matters affecting the fate of nations. But the key to understanding Leon is his singleness of purpose—a singleness of purpose directly responsive to injustice visited upon Leon when he was sixteen years old. It would be fair to say that America has for decades been the third-party beneficiary of the bigotry of the president of the engineering school that Leon entered as a freshman in 1944; rather than truckle to the plantation mentality that infected that school, Leon quit engineering and set his sights on law:² "I went to law school for one reason, and that

† Judge, United States District Court for the Eastern District of Pennsylvania.

¹ On September 23, 1993, when the *Legal Intelligencer*, America's oldest legal newspaper, commemorated its sesquicentennial by conferring on Leon its first Career Achievement Award, he was memorably introduced by Seymour ("Spence") Toll, of the Philadelphia bar, who had been a year ahead of Leon at Yale Law School. Looking back 44 years to Leon's arrival at Yale, in the fall of 1949, Spence recalled that his friend was "bigger than the coke machine in the student lounge." Seymour Toll, Introduction at the 150th Anniversary Celebration of *The Legal Intelligencer* (Sept. 23, 1993).

² See A. Leon Higginbotham, Jr., *The Dream with Its Back Against the Wall*, YALE L. REP., Spring 1990, at 34:

I'd like to pay tribute next to the individual who forced me to recognize that I had to go to school: Edward Charles Elliott, powerful president of Purdue University, at a time when presidents ran the universities.

There were a couple of problems at Purdue when I entered it as a sixteen-year-old freshman in 1944. There were about 6,000 white students, 12 black students. The 12 black students lived at a house that they had the temerity to call the International House. We slept in an attic with no heat. And after December and January, going to bed every night with earmuffs on, sometimes wearing shoes, other times three or four pairs of socks, jackets, I decided that I should go and talk to the university president.

was that the law was a powerful instrument and I felt that justice could overcome anything."³

Had President Carter—who appointed Leon Higginbotham to the Third Circuit—been reelected in 1980, or had Walter Mondale won in 1984 or Michael Dukakis in 1988, it is a fair surmise that Leon would by now be on the Supreme Court. That is where he has long belonged.

It is the nation's loss that Leon is not on the Court, for he would be so admirable a custodian of the Constitution.⁴ But Leon is already hard at work mitigating the nation's damages. Consider the important matters he has placed at the top of his agenda as a public lawyer: children (who, of course, are also on the Court's agenda); and Africa (which, by and large, lies outside the purview of

Monday morning at 10:00, I walked into his office by myself. And what was my radical request? Was I going to ask him to integrate the university dormitories? No. I asked if we could have a section in any dormitory, a section for 12 students, which was warm. Now if President Elliott had talked with me sympathetically, explaining his own impotence to change things but his willingness to take up the problem, perhaps to make a study, I might not have felt as I did. If he had communicated to me with some kind word or gesture, or even a sigh, that I had caused him to review his own commitment to things as they were, I might have felt that I had won a small victory, that I could go back and sleep in that attic. But he looked me in the eye, and he said, "Higginbotham, the law doesn't require us to let colored students in the dorm, we will never do it, and you either accept things as they are or leave the university immediately."

I am a lawyer today because of Dr. Elliott's negative motivation. Because, as I walked back from his office, I had a thousand thoughts. How could it be, that the law would not permit 12 good black kids to sleep in a warm dormitory? The law had been very effective in the draft. Some of my best friends had gone and died for our country. That very night, hundreds of black soldiers would run the risk of being injured in some far-off battlefields to make the world safe for democracy. And yet, the legal system that proclaimed equal justice for all would not give any semblance of dignity to a sixteen-year-old boy who had committed no wrong. I felt that I could not go into engineering, that I had to try to challenge the system.

Id. at 35-36.

³ Hank Grezlak, *Higginbotham Urges Aid for Underprivileged*, LEGAL INTELLIGENCER, Sept. 27, 1993, at 1, 14 (summarizing Judge Higginbotham's speech at *The Legal Intelligencer's* 150th anniversary celebration, at which he received the newspaper's first Career Achievement Award, "which honors a regional profession who has demonstrated a commitment both to the practice of law and the betterment of the community through the law").

⁴ If another vacancy occurs in the next two or three years, Leon Higginbotham's name would still merit serious consideration. He is in his mid-sixties, but he seems to have recovered from the illness that prompted his retirement as Chief Judge of the Third Circuit; given his extraordinary vigor, Leon could be expected to serve at least 15 years if named to the Court.

the Justices). Consider also Leon's scholarly agenda: for starters, he apparently hopes to aggregate in book form, as a proper sequel to *In the Matter of Color*,⁵ the several articles on South African and American apartheid he has produced over the last decade and more.

For most mortals Leon Higginbotham's lawyerly and scholarly work in progress would seem a daunting set of commitments. But most mortals are not guided by a moral compass as powerful as the singleness of purpose that has guided this extraordinary leader for almost half a century.

Prior to graduating from Yale Law School in the spring of 1952, Leon Higginbotham chose Philadelphia—not many miles from the small New Jersey town in which he grew up—as the place in which he would practice law. But—notwithstanding that he came to Philadelphia highly recommended by Yale's Dean, Leon Higginbotham was not able to find employment in a standard—i.e., white—Philadelphia firm (with the result that, when he began his career as a Philadelphia lawyer in 1952, he worked in the public sector as an assistant district attorney under Richardson Dilworth).

In December of 1952 the Supreme Court heard Thurgood Marshall and his fellow lawyers of the NAACP Legal Defense Fund present the first round of arguments in the *School Segregation Cases*. In the fall of 1953 the cases were reargued. And on May 17, 1954, the Court handed down its epochal decision.⁶ As this issue of the *University of Pennsylvania Law Review* comes from the press, we celebrate the fortieth anniversary of that decision.

The career of Leon Higginbotham tracks the life of our country from the *School Segregation Cases* forward. If our country is to redeem the still-unfulfilled promises of the *School Segregation Cases*, it will be because of the labors of Leon Higginbotham and those others—lawyers and non-lawyers alike—who share his commitment to freedom.

⁵ A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS, THE COLONIAL PERIOD* (1978).

⁶ See *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

