

THE HONORABLE A. LEON HIGGINBOTHAM, JR.:
TEACHER, MENTOR, AND FRIEND

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In October, 1978, I completed my clerkship with Judge Higginbotham and started working at a large Philadelphia law firm. Fortunately, I had the time to reflect back on the three preceding years and how much of an influence Judge Higginbotham had on my life, both professionally and personally. There was much to be thankful for and I was overwhelmed with gratitude.

As a third-year law student, I took Judge Higginbotham's course on "Race and the American Legal Process" at the University of Pennsylvania Law School. By that time, I thought I understood the American legal system. I believed all I really needed was to complete my third-year legal writing requirement. Yet sitting in the classroom, week after week, opened my eyes. Judge Higginbotham would stand up, walk over to you, speak with his booming voice and bring true meaning to the Socratic method. I did my best to be prepared. When he called on me, by the time the dialogue was done, all I could think of was what I didn't know.

Judge Higginbotham's class required more than simply reading and critically analyzing opinions. It was imperative that each student develop an understanding of the personal background of each judge who decided the case, the social and political context of the issues and the arguments that could or should have been made. Most importantly, we had to understand the options that were available to the court. In many respects, the options evolved around each judge's view of African-Americans. Were they human beings or something far less? We carefully reviewed *State v. Mann*,¹ where the Supreme Court of North Carolina failed to recognize slaves as human beings with any rights of their own. According to Judge Thomas Ruffin, a slave had no rights, not even the right to try to walk away from cruel and unjustifiable punishment inflicted by a master.²

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¹ 13 N.C. (2 Dev.) 263 (1829).

² See *id.* at 266.

Another case deserving of the critical analysis it received was *Dred Scott v. Sandford*,³ in which Chief Justice Roger Taney of the United States Supreme Court declared that "at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted . . . [blacks] had no rights which the white man was bound to respect."⁴ These opinions are clear examples of the judicial process at its worst and were studied with intensity. But Judge Higginbotham would never rest with an analysis, however sophisticated, of what was bad about the legal system. This was a course about options taught by a man with vision and hope.

Every former student of Judge Higginbotham also remembers *Somerset v. Stewart*.⁵ In *Somerset*, the King's Bench of England held that there were no moral or political grounds to support slavery and that it could only be justified by positive law.⁶ Every good former student also remembers Lord Mansfield's words discharging the slave from bondage in *Somerset*, as they were so eloquently repeated by Judge Higginbotham: "fiat Justitia, ruat coelumtet"—let justice be done whatever the consequences.⁷ The same good student also remembers how Judge Higginbotham pointed with pride to the fact that in 1688, near the city of Philadelphia, German Mennonites passed a resolution that stands as the first official protest against slavery in any American colony.⁸ Students who took Judge Higginbotham's course were challenged and the most difficult challenge was a very personal one. We each had to decide how we would treat people who were different, how we would practice law, and how we wanted our courts and the legal process to operate. Would we learn from our mistakes or simply repeat them?

Fortunately for me, the learning process did not end after graduation. After graduating from Penn Law School, I worked with Judge Higginbotham for two years. During the first year, I was a research assistant on "The Book."⁹ As is clear from reading the

³ 60 U.S. (19 How.) 393 (1857) (holding that blacks are not citizens of the states within the meaning of the Constitution).

⁴ *Id.* at 407.

⁵ 98 Eng. Rep. 499 (K.B. 1772).

⁶ *See id.* at 510.

⁷ *Id.* at 509.

⁸ *See* A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS, THE COLONIAL PERIOD 377 (1978).

⁹ Just as the family of research assistants and law clerks to Judge Higginbotham affectionately refer to him as "The Judge," we also refer to his almost ten-year effort culminating in the publication of *In the Matter of Color* as "The Book."

acknowledgments in *In the Matter of Color*, many individuals had the extraordinary opportunity to work with Judge Higginbotham in his continuing effort to publish works that would enable others far beyond the reach of his classroom to have a better understanding of issues of race and the American legal process.

After working as a research assistant, I moved on to become a judicial law clerk during 1977 and 1978 while Judge Higginbotham served on the United States District Court for the Eastern District of Pennsylvania and on the Court of Appeals for the Third Circuit. I learned more about litigation in federal court during that time than many practitioners do in a lifetime. It was fascinating to see Judge Higginbotham at work. Students of Judge Higginbotham marvel at his abilities in the classroom. Law clerks watched Judge Higginbotham in awe as he traveled around the country to lecture, wrote extensively on numerous subjects, taught several courses a week, played a fierce game of tennis, and conducted himself as one of the most preeminent jurists of our time. We watched because we could not keep up with him. Some tried hard before they started watching; we worked long hours. Judge Higginbotham kept everyone busy, his secretaries, law clerks, research assistants and a whole host of students. Often, our breaks were evening meals from one of our favorite establishments on Market Street which we soon referred to as "La McDonalds," although it was not known for fine French cuisine. The Judge insisted on treating everyone. Night after night he continued working long after we left for the evening, sometimes taking a break to give someone a ride home.

Research assistants and law clerks to Judge Higginbotham had more than a working relationship. Once you join the family, Judge Higginbotham becomes a close friend, a surrogate father and a lifetime mentor. As a friend, he shares with us his experiences, both good and bad, and allows us to see him as a human being. Like a father, he discusses the value of money, the need to live within your means, and worries about your personal safety and happiness. As a lifetime mentor, his door is always open to those who seek his advice on important decisions or want to share with him their problems and successes.

I knew then that I was privileged to work with Judge Higginbotham and to be a student in his class and chambers. One of the most important attributes of Judge Higginbotham is his intense need to reach out and help others who follow him. Many of those who have benefitted from his largess are former students, research assistants and law clerks. For several, he gave us an

opportunity that would have been otherwise unavailable. Surely, there were many research assistants and law clerks who were superior students and were destined to be successful in any chosen arena. There were also some, like myself, who, but for Judge Higginbotham, would not have had the opportunity to work on a scholarly book or article, or to clerk with a federal judge. To each of us who were diamonds in the rough, whether black or white, male or female, Judge Higginbotham gave of himself and provided an opportunity to grow and a challenge to reach our full potential. After our clerkships, doors were opened that might not have been otherwise. These doors led not only to professional opportunities, but also to opportunities to analyze and consider, for ourselves, many of the basic questions that Judge Higginbotham raised about the role of the law in our society and our obligation to make a positive contribution.

As I left his chambers in October, 1978, and reflected back on the previous three years, my feelings were mixed. There was much gratitude, but also sadness. I was afraid I would no longer be a beneficiary of Judge Higginbotham's wisdom and caring. Judge Higginbotham reassured me and professed a continued need for my judgment and insight. I knew that Judge Higginbotham truly was being gracious, as he always is, but appreciated the fact that his door would remain open.

In the following years we did stay in touch. I assisted Judge Higginbotham in teaching several semesters of graduate school at the University of Pennsylvania. Each year students would experience an awakening in class when the course materials and Judge Higginbotham's words struck that certain chord and it all came together. Each year I learned more and appreciated more fully Judge Higginbotham's insights even though I could not count the number of times I had been through the same materials. In time, Judge Higginbotham's interests expanded beyond the American legal system to include global concerns, particularly the difficult issues facing South Africa. After one class this year, I learned that Judge Higginbotham was retiring from the bench and leaving Philadelphia. Now I, the former student, was to become the teacher of the graduate school course. Judge Higginbotham leaving? This was extremely difficult to take. Who can imagine Philadelphia or the University of Pennsylvania without Judge Higginbotham?

After Judge Higginbotham announced that he was retiring from the bench, there were many functions honoring him. One function was an annual conference held by The Barristers Association of

Philadelphia, at which Judge Higginbotham was the honoree. As I looked around the banquet room during the dinner, it was amazing to see all of the former students, research assistants and law clerks. Again, I felt the same emotions I experienced in October, 1978. The gratitude is always there. The sadness took a different turn. Among many of those who worked with Judge Higginbotham and who remained in Philadelphia, there was a sense of loss. He was leaving us. Although I was sad, I was also heartened. Judge Higginbotham will continue to practice law, to teach, to write and to pass his message along. I am one of hundreds, even thousands, who have listened to the eloquent messenger and who have learned from him. What I have learned will stay with me. The message to those who have been taught is clear. He has challenged each of us to make a difference.

