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A Symposium Tribute to Judge A. Leon Higginbotham Jr: The Mentor and His Message

Margaret Chon

A SYMPOSIUM TRIBUTE TO JUDGE A. LEON HIGGINBOTHAM JR.: THE MENTOR AND HIS MESSAGE

*Margaret Chon**

I. THE MENTOR

> *We've studied the law and the practices of slavery. We've argued and we have judged the civil rights cases and, therefore, we are at an important crossroads. What should be our theme to America? Our theme with the great divide between the world which Thurgood Marshall envisioned and Clarence Thomas? It is that in the long, bloody and terrible history of race in America, there is no more time for foolishness.*[1]

Judge Higginbotham was a big man. Not only was he physically large—six-and-a-half feet, with the compelling voice of Yahweh, as noted in this Symposium by former clerk Barry Costilo[2]—but he was also enormous in spirit, compassion, persuasiveness, and passion. So large was his interest in other people that he would take time during his crowded schedule of lecturing, teaching, and judging to discuss with clerks over a bowl of microwave popcorn how to arrange one's personal finances to allow for public service. So huge was his capacity for knowledge and work that he would routinely

* Associate Professor, Seattle University School of Law. Cornell University, A.B. 1979; University of Michigan Law School, J.D. 1986. I would like to thank the editors of the *Loyola of Los Angeles Law Review* for organizing this Symposium, Professor Robert Chang for the idea of it, and my research assistant Naoko Inoue for her help.

1. Judge A. Leon Higginbotham Jr., Address at the Final Law Clerk Reunion (May 2, 1998) (transcript on file with the *Loyola of Los Angeles Law Review*).

2. *See* Barry Costilo, *An Unforgettable Year Clerking For Judge Higginbotham*, 33 LOY. L.A. L. REV. 1009 (2000).

awe law clerks half his age with his ability to digest voluminous bench memos and discern key legal arguments—as well as zero-in on key logical weaknesses—in record time. So immense was his humility despite his status that I once stumbled upon him in the early morning as he silently purged the law clerks' refrigerator of many of my containers of spoiled yogurt. Further, his gentleness was so capacious that, despite the many stresses and deadlines of a busy court, he uttered no explicit words of rebuke or unkindness for this or any other failing. Inside his chambers, the rooms often rang with laughter over some inside joke about courthouse politics. Lessons were taught—and learned—about the importance of passion, as well as reason, in the law. He was indeed a great man, as anyone who had contact with him could immediately sense.

The articles in this Symposium tribute to the Judge—indeed, all tributes to him, both formal and informal, that I have come across—emphasize his mentoring, as well as his message. This demonstrates that one of the Judge's most important legacies was his "people legacy"—his continual training of the next generation of leaders in ways that would keep alive the more than four-hundred-year-long struggle of American racial justice. As recently stated by one of his many mentees, the Judge "used to tell me at some points in history some people just have to keep the flame burning, and that's as much you can do."[3] Accordingly, the Judge's people legacy ensures that somewhere, someone will be positioned to lift a voice somehow against the smug, self-satisfied status quo during this post-civil rights era of backlash against affirmative action and voting rights, of cynical insistence on colorblindness even with respect to programs that remedy pervasive historical disadvantages, of deliberate amnesia about and premature weariness with the race problem. As one tribute stated:

> From the moment of his birth to a domestic worker and a laborer, A. Leon Higginbotham, Jr. had no choice but to fight inequality and injustice. It was a fight he would pursue for his entire life. As an African American who possessed the signal attributes of humility and self-sacrifice,

3. Dwight Lewis, *In a "Reasonable" Country, "Unreasonable" Violence*, THE TENNESSEAN, Dec. 19, 1999, at A27, *available in* 1999 WL 29989900.

> Judge Higginbotham determined early on that the tragedy of racism was encouraged by a legal profession and judiciary that were threatened and silenced by political expedience and social pressures.[4]

Judge Higginbotham's legacy is of the utmost importance because the pervasiveness of racism today is largely due to the silent acquiescence of those with a certain measure of power and their willingness to conform to "acceptable" behavior rather than speak out against the cumulative injuries of racial prejudice. This is, to a large extent, the result of the etiquette *du jour*: It is not polite these days to raise the issue of race. The topic is taboo except as a discussion item for national debates. Otherwise, it is something to be avoided. It is still grounds for career suicide if raised by the wrong person at the wrong moment. Today's racism manifests itself in this "polite" silence, a silence that is maintained by people who should know better. It has replaced lynchings, high-tech or otherwise, as the means by which the powerful keep people with less power in their place. Although less bloody, it is just as effective.

Given the depth of the Judge's influence, it is amazing how much could be learned in just one year. The Judge's menagerie[5] of people included law clerks, research assistants, visiting law students from South Africa, and summer interns from American law schools, many of whom assisted the Judge in both his research interests and his judicial duties. Former clerks such as Ed Dennis were often on the phone with the judge or in his inner office. The diversity of race and gender within his team of assistants was astounding. Our law clerk group joked that we were the "rainbow coalition," borrowing that term from Jesse Jackson who was then running for president.

As former law clerk Barry Costilo documents in this Symposium, some of the Judge's law clerks were hired to their surprise and then worked very hard to justify the reliance that the Judge had

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4. Richard H. Middleton Jr., *Remembering Two Giants of Judicial Independence*, TRIAL, Sept. 1999, at 9.

5. Philadelphia mayoral chief of staff Stephanie Franklin-Suber "said the [J]udge was so adept at promoting diversity that his group of clerks dubbed themselves 'the Higginbotham menagerie.'" Marcella Bombardieri, *Notables Honor "People's Lawyer,"* BOSTON GLOBE, Feb. 7, 2000, at B3, *available in* 2000 WL 3311468.

placed on them. I myself did not arrive at the Judge's chambers through traditional means, for I was originally placed with him, at my request, on a temporary basis from the Third Circuit staff attorneys office.[6] When one of his clerks left early to take a public service position, the Judge did not hesitate to hire me as a replacement. In hiring his "team," the Judge demonstrated that there is a large pool of qualified, competent minority law clerks available for those willing to look past elitist and exclusionary criteria.

The Judge provided all of us, even those who only had a one-year relationship with him, with lessons in how to be a racially principled and yet successful—oftentimes brilliantly so—person of power. Of the current list of the Judge's former law clerks and research assistants, the vast majority are either in law teaching or in public service, serving across the spectrum of national, state, and local positions. Even those who are in the private sector are, or have been, prominent in public sector or pro bono activities—people such as Gilbert F. Casellas, who is currently on the U.S. Census Monitoring Board,[7] and Edward Dennis, who spent fifteen years with the U.S. Department of Justice, spending part of that time as the Acting Deputy Attorney General of the United States.[8] Some, like his first law clerk Eleanor Holmes Norton, who represents the District of Columbia in the House of Representatives,[9] and Ronald Noble, who is now the head of Interpol,[10] have moved back and forth from teaching to public service. Others, like Sandile Ngcobo, have become part of the first wave of minority judges in countries such as South Africa. [11] Even those who were not part of the Higginbotham

6. The Third Circuit Staff Attorneys office, headed then by Paul Douglas Sisk, had a wonderful program to "rotate" staff attorneys for short stints as elbow clerks to the various judges. This allowed a tremendous camaraderie to develop between the young staff and the older judges who were often secluded in their chambers.

7. *See Business Briefs*, ST. PETERSBURG TIMES, June 16, 1999, at B6, *available in* 1999 WL 3326194.

8. *See Morgan, Lewis & Bockius LLP—Lawyers* (visited Apr. 3, 2000) <http://www.mlb.com/bios/dennises.htm>.

9. *See Congresswoman Eleanor Holmes Norton's Home Page* (visited Apr. 3, 2000) <http://www.house.gov/norton/welcome.htm>.

10. *See* Victoria Rivkin, *A Professor Well-Prepared to Chase Terrorists*, N.Y. L.J., July 16, 1999, at 1.

11. *See* Jonny Steinberg, *Ngcobo Appointment Draws Fire*, AFR. NEWS

menagerie have been affected and influenced greatly by the Judge's example. Professor Charles Ogletree of Harvard Law School, for instance, plans to complete the unfinished work of the Judge in an act of honor and respect.[12]

For those of us who are law teachers, the Judge's examples still reverberate. One of the many activities that the Judge committed himself to continuing, year after year, was teaching classes on race and law using his own materials. Despite his incredibly heavy schedule, the Judge took on this extra duty as a response to the "racelessness" of the law school curriculum. For, as his first book, *In the Matter of Color*,[13] demonstrated by its very publication, the topic of race in the American legal system was—and still is—underexplored and underemphasized by American legal educators and scholars. Some of that scholarly work is being continued—by Professor Charles Ogletree, for example,[14] and by former law clerk Adrienne D. Davis, now a professor at American University. The latter writes that the "brilliant histories by [the Judge] illuminating the nexus of enslavement and sexual regulation initially stimulated" her decision to write about antebellum and postbellum intestate succession and testamentary transfers involving the formerly enslaved.[15]

Even in subjects outside the area of race, the Judge's commitment to outreach and diversity made a difference. Former law clerk Professor Lorray Brown at the University of Michigan Law School affirms how "the [J]udge had always had an influence on my professional career. Working with him[] gave me the self-confidence and pride about my work and competence . . . ."[16] For people of color, especially women of color, in front of the classroom, this added measure of self-confidence is an elusive but crucial factor in professional success. And he was a role model, too, for white male law

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SERV., June 1, 1999, *available in* 1999 WL 19528943.

12. *See* William Glaberson, *Legal Scholar to Finish Work of His Late Mentor*, N.Y. TIMES, July 10, 1999, at A10.

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

14. *See* Glaberson, *supra* note 12, at A10.

15. Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 STAN. L. REV. 221, 221 n.* (1999).

16. E-mail message from Lorray Brown, Clinical Assistant Professor, University of Michigan Law School, to Margaret Chon, Associate Professor of Law, Seattle University School of Law (Feb. 7, 2000) (on file with author).

clerks. Professor Larry Palmer, who teaches medical ethics at Cornell University, was the executive producer of an educational video dealing with the Tuskegee Syphilis Study, entitled "Susceptible to Kindness: Miss Evers' Boys and the Tuskegee Syphilis Study."[17] Professor John Q. Barrett adds his voice to the chorus of those "hugely influenced" by the Judge's perspectives, as he teaches criminal procedure and professional responsibility at St. Johns University School of Law.[18] Even those who teach abroad, such as Professor Jerry McAlinn in Tokyo, Japan, make pedagogical choices influenced by the Judge's example: "In my course called American Law and Society I always include one unit on race using *Plessy*, *Brown*, *Loving* and a few other leading cases [and] we discuss remedies and issues relating to diversity, affirmative action, quotas, and reverse discrimination."[19] The Judge's people legacy also includes each of the law students whom we law professors manage to touch with our hearts and our (unfortunately, still non-mainstream) reading materials on race and racial justice.

In my own civil procedure class, I introduce explicit discussions of race relations in jury selection, subject matter jurisdiction (through the Justice Taney opinion in the *Dred Scott* case,[20] which the Judge was ever-quick to revile for its clear exposition of racial separation and hierarchy), and re-opening of judgments (through materials on the Japanese American *coram nobis* redress for internment). Actually, race-related materials are not difficult to find or to place within the mainstream curriculum, if one is so inclined. Not surprisingly, American courts were and still are continually confronted by the tragic consequences of racism—even within the context of a "technical" subject such as civil procedure. Of course, the silence about

17. *See* E-mail message from Larry I. Palmer, Professor of Law, Cornell Law School, to Margaret Chon, Associate Professor of Law, Seattle University School of Law (Feb. 7, 2000) (on file with author).

18. *See* E-mail message from John Q. Barrett, Professor of Law, St. John's University School of Law, to Margaret Chon, Associate Professor of Law, Seattle University School of Law (Feb. 17, 2000) (on file with author).

19. E-mail message from Jerry McAlinn, to Margaret Chon, Associate Professor of Law, Seattle University School of Law (Feb. 9, 2000) (on file with author) (citing Loving v. Virginia, 388 U.S. 1 (1967); Brown v. Board of Educ., 347 U.S. 483 (1954); Plessy v. Ferguson, 163 U.S. 537 (1896)).

20. Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).

race in the mainstream law school curriculum guarantees that some students, perhaps even a majority, view any efforts to introduce race discussions into the classroom with cynicism and suspicion. Even as our daily news is filled with evidence of the consequences of leaving such matters unexamined in our elite educational institutions, race and racism are not viewed as core topics for legal education.

Other students—many of whom are often from a minority background by race, class, sexual orientation, or gender—appreciate breaking the silence about race. Despite the assimilationist pressures of the legal academy, there is a tremendous hunger among these students for this topic of discussion. They evince a strong desire that important mentors, like their professors, pay attention to social issues that affect people directly, issues of which law is a part and to which it is a response. The Judge's strong example produced this commitment to honor the diversity of my students' backgrounds and to pay attention to the legal historical legacy of race inside the law school classroom.

This year, some of my civil procedure students have engaged in an optional book group dialogue about race, culture, and the American justice system. The group itself is a wonderfully diverse mix of genders, races, sexual orientations, and national origins. Because of the willingness to delve into these materials and this dialogue, my students and I have witnessed powerful moments of heartfelt tears and straightforward confessions of historical ignorance. In the moot courtroom of our law school building, we have laughed over the shared absurdities of being part of a culture so deeply in denial about the wounds of assimilation and racism. We have also connected across vastly different individual and cultural histories. I consider this "people work" to be a legacy of the Judge, as much as any of his published opinions, articles, or books. I hope he would be proud; for, as he reminded us at our last meeting, there is no time for foolishness.

II. . . . AND HIS MESSAGE

I take profound disagreement with Congressman [Robert] Barr's categorization of the "real America," which he apparently understands [with such] fine discernment and [to which] those who teach at universities are [supposedly]

> *oblivious. You know, we have students and they teach us something. And my father was a laborer, my mother was a domestic, and I climbed up the ladder and I did not come to where I am through some magical veil. . . . So that I am willing to match you any hour, any day in terms of the perception of the real American.*[21]

As I think about it now, the Judge's chambers in the Philadelphia federal courthouse were subversively located. Across Market Street is the place where Thomas Jefferson wrote the Declaration of Independence, commemorated by a small brick building. A few blocks away is Independence Hall, where the founders of this country debated the terms of the Constitution and reached their compromise on the issue of slavery. The latter building is close enough to the courthouse that, during the celebration of the bicentennial of the Constitution, we could see from our office windows then-President Ronald Reagan delivering his speech as he stood framed by the front doors.

Like many lawyers who believed in the promise of the civil rights movement, the Judge had a distinctly bifurcated vision of American law. One vision was the promise of the founding documents of this country, as symbolized by the formal, tidy, and assertive structures of Independence Park. This is the vision of "we the people,"[22] of self-evident truths that "all men are created equal."[23] It is the vision of the European Enlightenment, transplanted to America, the ideals of which we are all taught as gospel in elementary school. This is the rational part of the history of America.

The other vision was a profoundly different one, one that disturbs and even enrages those who want to believe in the unsullied purity of the first vision. This is the vision of "we the people of color," the one that is symbolized by the urban decay just a few blocks away from Independence Hall. It is the vision that caused the Judge, over and over again during his distinguished career, to ask the hard questions, the questions many do not want to hear. This is the irrational

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21. *Hearing Before the House Judiciary Committee on the Consequences of Perjury and Related Offenses* (Dec. 1, 1998), *available in* 1998 WL 831268 (F.D.C.H) (testimony of Judge A. Leon Higginbotham Jr.).

22. U.S. CONST. preamble.

23. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

history of America, the America that is not taught at all in many cases, but which affects all of us, even today. As the nation was celebrating the constitutional bicentennial celebration with fanfare and self-congratulation, the Judge asked, "Did the Declaration of Independence announce a self-evident truth or a self-evident lie?"[24]

Such a question both affirms and critiques the prevailing wisdom, for the answer, as the Judge knew, was not an either/or answer. In crude historical perspective, of course, the equality of all people in the United States was far from evident in Thomas Jefferson's day. Jefferson did not mean to include his own slaves or his womenfolk in that formulation "all men." Even today, the answer to the Judge's question still points to a self-evident lie. Despite the formal equality enunciated within the Fourteenth Amendment's "equal protection of the laws," the actual experience of equality in this country depends very much still on skin color or gender. And the legal analysis of equality is heavily weighted towards formalistic legal analysis and away from the experiences of differentially racialized or gendered bodies.

And yet, the answer, then as now, is a potentially self-evident truth. The promise and the ideal of these founding documents are attained only because of the insistence of those whom they excluded—blatantly at first, more subtly now. The Judge's life and legal work spanned both the lies and truths of these documents. And his life's work, rather than illustrating an inexorable climb towards greater progress and understanding, shows instead the fits and starts, the regressions and backlash, the idealistic assertions and smooth reactionary lies that accompany any liberation movement. Recently he said, "I witnessed the birth of racial justice in the Supreme Court and here now, after 45 years as a lawyer, judge, and law professor, I sometimes feel as if I am watching justice die."[25]

In my race and law class, students exposed to legally sanctioned racism for the first time express a tremendous amount of surprise at

24. Derrick Z. Jackson, *Higginbotham's Words of Wisdom*, BOSTON GLOBE, July 2, 1999, at A19, *available in* 1999 WL 6070024 ("It was Higginbotham who, in the midst of the bicentennial of the American Revolution, dared to interrupt the fireworks to ask: 'Did the Declaration of Independence announce a self-evident truth or a self-evident lie?'").

25. Bombardieri, *supra* note 5, at B3.

how much of American legal history with respect to race has been suppressed. Over and over again, they ask: Why did we not learn this before? Why isn't this material being taught in our other classes? Indeed, how would our view of American law change if all law students learned that slaves were treated as chattel rather than people capable of being "injured" if they were plaintiffs in a tort suit? What notion of justice under law might emerge if the slave statutes were routinely taught in first-year property class, or if *Dred Scott* were included in civil procedure casebooks? What is the purpose of this amnesia?

Because of his formidable scholarship on the slavery laws and other historical aspects of race regulation, the Judge could see clearly the tragic repetitions of racial domination and subordination within which we will continue to be trapped unless we unblinkingly face their origins and continual perpetuation in our social system, including our legal culture. The reminiscences in this Symposium of Colleen L. Adams, Rubin M. Sinins, and Linda Y. Yueh,[26] as well as F. Michael Higginbotham and José Felipé Anderson,[27] point out that this is one of the Judge's most important messages. His last book, *Shades of Freedom*,[28] insists upon historical memory with its statement of the ten precepts of American slavery jurisprudence. It is telling that those, such as critic Jeffrey Rosen,[29] trained at the most elite law schools but sadly lacking in any formal exposure within those schools to the ways in which our legal system reinforced and continues to maintain social subordination based on skin color, can write off these precepts as exaggerated. Perhaps none of their law professors showed them how deeply American law has been implicated in this process of racism. It may be that in order to be a

26. Colleen L. Adams et al., *A Life Well Lived: Remembrances of Judge A. Leon Higginbotham Jr.: His Days, His Jurisprudence and His Legacy*, 33 LOY. L.A. L. REV. 987 (2000).

27. F. Michael Higginbotham & José Felipé Anderson, *A. Leon Higginbotham Jr.: Who Will Carry the Baton?*, 33 LOY. L.A. L. REV. 1015 (2000).

28. A. LEON HIGGINBOTHAM JR., SHADES OF FREEDOM: RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS (1996).

29. *See* Jeffrey Rosen, *The Bloods and the Crits: O.J. Simpson, Critical Race Theory, the Law, and the Triumph of Color in America*, NEW REPUBLIC, Dec. 9, 1996 (criticizing the racial conclusions that "critical race scholars" have drawn with regard to the American legal system).

well-educated lawyer in America today, one is necessarily ignorant about the legal system's role in race and racial history.

Most poignantly, even at the very end of his life, when he could justifiably lay down his burden and rest, the Judge refused to turn away from the current backlash against the civil rights movement, which has historical precedent in the post-Reconstruction era. Among the indignities suffered by the Judge in the last few years of his life was an appearance before a panel of three white male southern judges in a voting rights case that he was trying in Louisiana.[30] At the last law clerk–research assistant reunion, he stated:

> In the history of Louisiana, never had there been . . . after the reconstruction period . . . a black person elected in a state-wide office, though blacks were in excess of 30% of the population in Louisiana . . . . And as I went before the court, which was hostile—shockingly hostile . . . I started by saying to the court, "If I live a thousand years, this will be the most important experience I've ever had." I didn't want to say, "You're the most racist people I've ever met."[31]

As we listened to this speech, each person in the room was distinctly aware that the Judge's time on earth was short. He was fighting to the end. After his speech ended, I asked my former co-clerk, Susan Ginsburg,[32] how the Judge could withstand these assaults to the ideals he held so deeply. How could he bear it? The answer came back simply: The Judge has seen how history has vindicated his position. And he believes that history once again will vindicate his message.

During the Judge's testimony to the House Judiciary Committee, given two weeks before he died, Representative Robert Barr of Georgia accused him of not being a "real American."[33] In this

30. *See* Judge A. Leon Higginbotham Jr., Address at the Final Law Clerk Reunion (May 2, 1998) (transcript on file with the *Loyola of Los Angeles Law Review*).

31. *Id.*

32. Ms. Ginsburg is with the U.S. Department of the Treasury, and is one of the former clerks who is doing remarkable work in public service with her kids and guns program. *See* Erik Larson, *Squeezing Out the Bad Guys*, TIME, Aug. 9, 1999, at 35-36.

33. Congressman Barr stated:

"[T]here really are, I think, two Americas. And there is a real Amer-

appearance, and in his argument before the conservative white male judges in Louisiana, the Judge stood for Americans who have been—who *are*—excluded from the nation we call America; the Americans who were not allowed to immigrate here because of the shape of their eyes and the color of their skin; the Americans who preceded the European settlers, but who were forced from their homelands or denied their right to their cultural practices; the Americans who are continually told, even now, that they must assimilate into being "real" Americans by accepting the ideology that there can be only one reading of the Constitution, one that erases the terrible exclusion that accompanied the self-conscious formation of our republic into a *white male* nation; the Americans who historically have borne the systematic brunt of exclusion, economic marginalization, violence, and scorn. The Judge stood for all these Americans with tremendous dignity, presence, wisdom, intellect, and passion. His message was that we all belong.

There are many forms of resistance to the Judge's message. There is outright denial, as in the voting rights cases, or more recently, as this Article is going to press, the *Rice v. Cayetano*[34] decision emanating from Hawaii. There is the absence of historical perspective on current legal issues and the deliberate rejection of sociological and political context in judicial decision-making, as described above. There are false premises such as the assumption that

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> ica out there. . . . Also, the reason I'm not depressed, Mr. Chairman, is the real world out there, people understand the Constitution. And they understand, unlike some of our law professors here today, . . . [that] the primary focus of the Constitution as given to us by our founding fathers for abuse of office is impeachment. . . . [The] real America understands that the Constitution is there for a reason. That it does mean something. . . ."

Hearing Before the House Judiciary Committee on the Consequences of Perjury and Related Offenses (Dec. 1, 1998), *available in* 1998 WL 831268 (F.D.C.H) (statement of Congressman Robert Barr (R-Ga.)). Judge Higginbotham's response to this statement followed that of Harvard Law Professor Alan Dershowitz, who stated that "whenever I hear the word 'real Americans,' that sounds to me like a code word for racism, a code word for bigotry, and a code word for anti-semitism." *Id.* (testimony of Alan Dershowitz).

34. 120 S.Ct. 1044 (2000) (striking down as violating the Fifteenth Amendment a Hawaii law that limited voting in a statewide election to voters who qualified as ancestors of the original aboriginal peoples that inhabited, subsisted in, and exercised sovereignty over Hawaii prior to 1778).

the only "real" Americans are white Americans; or the assumption that as a society, we are already truly color-blind and that, therefore, history and other structural analyses are irrelevant.[35]

But there are also many ways in which the Judge's message is alive and well. Our redemption as a nation on issues of race will depend on those who, like the Judge, keep the flame burning. Whether we, like the Judge, lead in a big way, or whether we each lead in our own small ways, those of us who were touched by A. Leon Higginbotham Jr. will never again be the same. The mentor and his message changed us forever . . . and the world will change with us because as he reminded us, there is no more time for foolishness.

35. *See* Judy Simmons, *Black America: Still Searching For Identity*, NEW CRISIS, July 1, 1999, *available in* 1999 WL 28644269. In her article, Simmons describes the understanding that

> [s]uch labels as 'biracial' and 'multi-racial' (which could be applied to almost everyone alive on earth today) have not yet achieved any practical significance in the racially bifurcated life of this nation. . . . What's wrong with this picture? Thurgood Marshall and Leon Higginbotham knew. . . . The White collective is in deep denial and, therefore, in deep trouble.

Id.