

S. 2591. A bill to amend chapter 1 of title 17, United States Code, to provide an exemption from exclusive rights in copyright for certain nonprofit organizations to display live football games, and for other purposes; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I rise to introduce legislation which would modify the limitations on churches showing the Super Bowl under the NFL copyright franchise. Churches across the country were notified by the NFL not to show the Super Bowl on a big screen because it infringed their copyright. There is an exception under the copyright laws for bars. It is anomalous that you can go to a bar and see the Super Bowl, but you cannot go to a church for a social gathering and do the same. This legislation will correct that.

Mr. President, I ask unanimous consent that my full statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTRODUCTION OF LEGISLATION EXEMPTING  
RELIGIOUS ESTABLISHMENTS FROM THE PUBLIC  
PERFORMANCE RIGHT FOR SPORTS PROGRAMMING

Few images are more distinctly American than that of a religious community coming together not only in prayer but in fellowship to watch a major sporting event. For years, houses of worship across this country have opened up their doors and welcomed their congregation into their halls to watch the Super Bowl. They have provided families with an alternative to going to the local bar down the street to cheer for their favorite team. However, if the National Football League has its way, such gatherings will come to an end.

A strict reading of the copyright code prohibits virtually anyone from bringing a large group of people together and watching the Super Bowl. The one exception to this general rule is "food service and drinking establishments." This exemption allows sports bars to show a sporting event, so long as they do so on screens that do not exceed fifty-five, 55, inches. Although the law is nearly impossible to enforce for Super Bowl parties held in places other than food service and drinking establishments, the NFL has turned its sights on churches and other houses of worship, which use the large screens normally reserved for displaying hymns to show the Super Bowl to their congregation.

Over the past several years, the NFL has begun sending churches across the country cease-and-desist letters, warning them not to show the game on their big-screen televisions and threatening them with a copyright infringement suit if they do. These religious establishments—many of which do not have enough money to even think about defending themselves against a giant such as the NFL—have had little choice but to shut down these gatherings.

This is unfortunate because many houses of worship have used these events to reach out to their members, as well as potential new members, particularly young people. As Reverend Thomas Omholt, senior pastor of St. Paul's Lutheran in Washington, DC, stated in a recent Washington Post article, "It takes people who are not coming frequently, or who have fallen away, and shows them that the church can still have some fun." These churches do not charge their members

to watch the game nor have they used them as fundraisers. Rather, these events provide churches with a means of connecting with the greater community and new potential members of their congregation. The uniqueness of these events is underscored by the fact that these churches do not use the Academy Awards or other popular television programming as a means of outreach.

When Congress created the sports bar exemption in 1998, they did so based on the rationale that the display of copyrighted performances—such as football games—in sports bars and similar establishments did not negatively impact the overall viewership for the game and value of the rights to the game. The same rationale applies to churches. Allowing churches to show the game would not diminish the overall viewership for the Super Bowl. If anything, it increases the viewership by making it a social event and bringing people out to watch the game who might not have watched it at home or in a bar.

Today, I am introducing legislation that will create a new exemption for religious establishments. This legislation will provide churches and other houses of worship with the protection that they need to gather to watch the Super Bowl without fear of being sued for copyright infringement. This exemption will have limitations. For example, in order to qualify for the exemption, a church may not charge a fee to view the game. This will ensure that religious establishments do not unfairly profit from the NFL's copyright. Further, the exemption only applies to the live broadcast of a professional football game at the church or house of worship. A church may not tape the game to show at a later date or rebroadcast the game to another location. In other words, the legislation simply provides churches with a limited yet justifiable exemption to allow them to bring their congregation together to watch the Super Bowl.

I am aware that some may argue that this bill implicates constitutional concerns. This is not the first time that we have recognized the unique needs of the religious community in the Copyright Code. Indeed, the section of the Copyright Code that we are amending already has an exemption for houses of worship and other religious assemblies for the use of copyrighted works of a religious nature. Although the Constitution does not require the creation of an exception in this case, it is reasonable to pursue one. In preparing this measure, my staff has researched the issue and spoken with some of the foremost experts in the field of First Amendment law. They share our view that this legislation appears consistent with the Establishment Clause of the Constitution. This legislation will not further entangle Government with religion but instead accommodates the needs of houses of worship and recognizes their important role in the communities they serve.

In a time when our country is divided by war and anxious about a fluctuating economy, these type of events give people a reason to come together in the spirit of camaraderie. We, Congress, need to recognize the unique need that these events satisfy and provide religious establishments with the protection that they need. I urge my colleagues to join me in this effort.

Mr. SPECTER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 441—CONGRATULATING THE NEW YORK GIANTS ON THEIR VICTORY IN SUPER BOWL XLII

Mr. SCHUMER (for himself, Mrs. CLINTON, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted the following resolution; which was considered and agreed to:

S. RES. 441

Whereas, on Sunday, February 3, 2008, the New York Giants defeated the New England Patriots by a score of 17-14 to win Super Bowl XLII;

Whereas the Giants, who were double-digit underdogs, overcame overwhelming odds to defeat the Patriots;

Whereas Giants owners John K. Mara and Steve Tisch have built the Giants organization into a championship caliber team;

Whereas Eli Manning, having led a game-winning drive for 83 yards at the end of the fourth quarter, was named the game's Most Valuable Player;

Whereas David Tyree's game-breaking catch will forever go down in Super Bowl history as one of the greatest plays ever;

Whereas the relentless onslaught of the Giants defensive line, highlighted by spectacular plays by Justin Tuck, Osi Umenyiora, and team Captain Michael Strahan, sacked Patriots quarterback Tom Brady 5 times;

Whereas the Giants capped off an amazing playoff run by winning all 4 playoff games on the road as underdogs;

Whereas Giants head coach Tom Coughlin, in his first appearance in the Super Bowl, lead his team to victory from the wild card spot;

Whereas this marks the third time in franchise history that the Giants have won the Super Bowl;

Whereas the Giants attract fans from New York, New Jersey, and Connecticut to their home games in East Rutherford, New Jersey, and to away games across the country; and

Whereas Giants fans from across the tri-state region have rallied together to cheer the Giants for coming from behind to win in the biggest upset in Super Bowl history: Now, therefore, be it

Resolved, That the Senate congratulates the New York Giants on their victory in Super Bowl XLII.

SENATE RESOLUTION 442—COMMEMORATING THE LIFE OF A. LEON HIGGINBOTHAM, JR

Mr. CASEY (for himself, Mr. SPECTER, and Mr. LEAHY) submitted the following resolution; which was considered and agreed to:

S. RES. 442

Whereas the late A. Leon Higginbotham, Jr., dedicated his life to eliminating racial barriers in the society of the United States;

Whereas, having grown up during the Great Depression and the era of Jim Crow laws, A. Leon Higginbotham, Jr., overcame a childhood marked by economic hardship and segregation;

Whereas, having personally experienced the effects of racism, A. Leon Higginbotham, Jr., sought an education and career in law during which he fought institutionalized racism in the United States judicial system;

Whereas A. Leon Higginbotham, Jr., began his legal career as a law clerk to Justice Curtis Bok of the Superior Court of Pennsylvania and soon became the youngest and

first African-American Assistant District Attorney in the city of Philadelphia;

Whereas, in 1954, when African Americans were largely excluded from professional opportunities, A. Leon Higginbotham, Jr., became a founding member of Norris, Schmidt, Green, Harris, & Higginbotham, the first African-American law firm in Philadelphia;

Whereas, while still in private practice, A. Leon Higginbotham, Jr., served as Special Deputy Attorney General for the Commonwealth of Pennsylvania, Special Hearing Officer in the Department of Justice, President of the Philadelphia chapter of the National Association for the Advancement of Colored People, a member of the Executive Board of the Governor's Committee of One Hundred for Better Education, Commissioner of the Pennsylvania Fair Employment Practices Commission, Commissioner of the Pennsylvania Human Rights Commission, and a member of the board of directors for various legal, political, and nonprofit organizations within Pennsylvania;

Whereas, having been appointed by President John Fitzgerald Kennedy to the Federal Trade Commission in 1962, A. Leon Higginbotham, Jr., became not only the first African American to serve on a Federal regulatory commission but also the youngest person to be named as a Commissioner of the Federal Trade Commission;

Whereas, having recognized A. Leon Higginbotham, Jr.'s gifts as both a lawyer and a public servant, both President Kennedy and President Lyndon Baines Johnson nominated A. Leon Higginbotham, Jr., as a Federal judge on the United States District Court for the Eastern District of Pennsylvania;

Whereas, upon confirmation as a Federal judge at the age of 35, A. Leon Higginbotham, Jr., became the youngest person appointed to the United States District Court for the Eastern District of Pennsylvania and one of the youngest ever appointed to a Federal bench;

Whereas, in his role as a Federal judge, A. Leon Higginbotham, Jr., served as a mentor to numerous young attorneys, affording them the opportunity to gain critical exposure to the legal profession;

Whereas A. Leon Higginbotham, Jr., played an extraordinary role in the civil rights movement as an advisor to President Johnson after the tragic assassination of Dr. Martin Luther King, Jr., and as a member of the National Commission on Causes and Prevention of Violence;

Whereas, as the first African-American member of the Yale University Board of Trustees, A. Leon Higginbotham, Jr., successfully fought to allow women to enroll as undergraduates in Yale College;

Whereas, in 1977, President Jimmy Carter acknowledged A. Leon Higginbotham Jr.'s work as both a judge and a scholar and appointed him to the United States Court of Appeals for the Third Circuit;

Whereas A. Leon Higginbotham, Jr., sat on the Court of Appeals for 16 years and served as Chief Judge from 1989 until 1991 and as Senior Judge through the completion of his public career in 1993;

Whereas, through his rulings and subsequent writing, A. Leon Higginbotham, Jr., vigorously fought racial bias and prejudice;

Whereas, upon retirement from the bench, A. Leon Higginbotham, Jr., became the Public Service Jurisprudence Professor at Harvard University, dedicating the remainder of his life to educating and empowering future generations to continue the pursuit of equal justice under the law;

Whereas, A. Leon Higginbotham, Jr., served as the chairman of an American Bar Association panel that in 1993 issued the landmark report "America's Children at

Risk: A National Agenda for Legal Action", studying the status of children in the society and legal system of the United States;

Whereas, in 1993, A. Leon Higginbotham, Jr., served as counsel to the law firm of Paul, Weiss, Rifkind, Wharton, & Garrison, where he litigated a host of pro bono matters, including voting rights in Louisiana, and advocated free elections in South Africa;

Whereas, A. Leon Higginbotham, Jr., brought his passion for equal justice into the international arena as a consultant to the President of South Africa, Nelson Mandela, on the formation of the Constitution of South Africa, and as an advocate for grass roots democracy education in South Africa;

Whereas, in 1995, A. Leon Higginbotham, Jr., continued his commitment to public service when appointed by President William Jefferson Clinton to the United States Commission on Civil Rights;

Whereas, as an author and contributor to more than 100 publications and academic works, A. Leon Higginbotham, Jr., left a legacy as a renowned scholar of racial and social justice issues in the United States;

Whereas, A. Leon Higginbotham, Jr.'s critically acclaimed historical works, including "In the Matter of Color: The Colonial Period", published in 1978, and "Shades of Freedom: Racial Politics and Presumptions in the American Legal Process", published in 1996, continue to provide invaluable insight into the history of race relations in the United States;

Whereas, as a sought-after public speaker, after his retirement A. Leon Higginbotham, Jr., delivered more than 100 speeches annually to motivate the next generation of people in the United States to continue the fight for racial justice;

Whereas A. Leon Higginbotham, Jr., received numerous honors and awards during his lifetime, including the Presidential Medal of Freedom, the Raoul Wallenberg Humanitarian Award, the National Association for the Advancement of Colored People Spingarn Medal, the American Civil Liberties Union Medal, the Lifetime Achievement Award from the Philadelphia Bar Association, the Silver Gavel Award from the American Bar Association, America's Ten Outstanding Young Men of 1963 from the United States Junior Chamber of Commerce, and honorary degrees from more than 60 universities; and

Whereas A. Leon Higginbotham, Jr.'s work as an esteemed jurist, scholar, and public servant helped transform the Nation's perception of race: Now, therefore, be it

*Resolved*, That the Senate—

- (1) commemorates the life of the late A. Leon Higginbotham, Jr.;
- (2) salutes the lasting legacy of A. Leon Higginbotham, Jr.'s achievements; and
- (3) encourages the continued pursuit of A. Leon Higginbotham, Jr.'s vision of eliminating racial prejudice from all aspects of our society.

The PRESIDING OFFICER. The senior Senator from Pennsylvania.

Mr. SPECTER. Mr. President, at the outset, I compliment my distinguished colleague from Pennsylvania, Senator CASEY, and congratulate him for his initiative in organizing the tribute to Judge Higginbotham.

Later this afternoon, there will be a symposium on the legacy of Judge Higginbotham with very distinguished scholars: Dr. John Hope Franklin, Dr. and Professor Charles Ogletree, and the Honorable ELEANOR HOLMES NORTON, who was Judge Higginbotham's first law clerk.

Judge Higginbotham's record has been appropriately described by Senator CASEY. I know the managers are interested to move ahead, so I ask unanimous consent that the full text of my statement be printed in the RECORD, along with an article published, which I wrote, in the Philadelphia Tribune on January 27 of this year.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HONORING THE LATE JUDGE A. LEON HIGGINBOTHAM, JR.

Mr. SPECTER. Mr. President, I seek recognition to join Senator CASEY in introducing a resolution to pay tribute to the late Judge A. Leon Higginbotham, Jr.

Judge Higginbotham was a Philadelphia lawyer, legal scholar, jurist and statesman who did not give in to prejudice, despair, or age. From his appointment at the age of 35 to the federal bench until his death at age 70, he pursued civil rights, justice and equality for all Americans. His message was positive—while much had been accomplished, even more remains to be done. Initially studying engineering in college, he said he was motivated to study law when he was living off campus in an unheated attic, the outside temperature hit zero, and the university president said he was denying the request to allow Higginbotham to live in a heated section of the dorm because "the law doesn't require us to." He said another incident was a second catalyst: when traveling as a member of his college's debate team, Higginbotham was denied a room in a hotel with his classmates and was required to stay at a rat-infested "colored YMCA."

After his graduation from Yale Law School in 1952, Higginbotham received a chilly reception and no job offers from law firms in Philadelphia. Undeterred, he began his career as a law clerk for Judge Curtis Bok of the Philadelphia Court of Common Pleas. Having demonstrated himself to be a capable and intelligent lawyer, he was hired by then district attorney Richardson Dilworth. In 1954, he left the office to become a founding member of the first African American law firm in Philadelphia: Norris, Schmidt, Green, Harris, and Higginbotham. From 1960 to 1962, he continued to advance civil rights by serving as president of the Philadelphia chapter of the NAACP.

The Senate confirmed Judge Higginbotham's appointment to the federal bench in 1964, despite procedural obstacles in the Senate Judiciary Committee. When he parked his car on his first day as a judge, a guard made a derogatory comment and told him the lot was reserved for judges. Judge Higginbotham later described the incident as "typical of a lot of things which have happened to both minorities and to women." Indeed, Higginbotham was also a strong advocate for women's rights. As the first African American trustee of Yale, he pushed for opening the University to women. His first law clerk was Eleanor Holmes, who later became Eleanor Holmes Norton, who currently serves as the Delegate to the U.S. House of Representatives for the District of Columbia.

Judge Higginbotham was a prolific writer who focused on facts and careful legal analysis. In his nearly three decades as a judge, Judge Higginbotham authored more than 600 published opinions, taught at the University of Pennsylvania, and wrote important books on the history of race in America—books such as "In the Matter of Color" and "Shades of Freedom". After retiring from the bench, Judge Higginbotham founded the South Africa Free Election Fund and helped

South Africa's newly elected government draft a new constitution.

Nelson Mandela said "Judge Higginbotham's work and the example he set made a critical contribution to the course of the rule of law in the United States and a difference in the lives of African Americans, and indeed the lives of all Americans. But his influence also crossed borders and inspired many who fought for freedom and equality in other countries. . . ." Jesse Jackson said of Judge Higginbotham: "What Thurgood Marshall and Charles Hamilton Houston were to the first half of this century, Judge Higginbotham was to the second half." After his funeral, Rosa Parks commented, "I think he really had a great idea that we are all equal people."

As Yale Law graduates, former district attorneys and public servants, Higginbotham and I often crossed paths. I am grateful for the opportunity to have known this extraordinary man and his passionate and steadfast dedication to civil rights and the betterment of this country. As we celebrate Black History Month, I am honored to co-sponsor with my colleague from Pennsylvania, Senator CASEY, a resolution honoring the lifetime achievement of the late Judge A. Leon Higginbotham, Jr.

[From the Philadelphia Tribune, Jan. 27, 2008]

LEON HIGGINBOTHAM  
(By Arlen Specter)

Two weeks before his death in 1998, A. Leon Higginbotham, Jr. appeared before the House Judiciary Committee to state his view that the charges against President Clinton did not warrant removal from office. When a Congressman said that "real Americans" thought otherwise, Higginbotham replied: "Sir, my father was a laborer, my mother a domestic. I came up the hard way. Don't lecture to me about the real America." After the hearing, C-SPAN cameras showed committee members and staffers surrounding Higginbotham to request photographs, while he leaned on the cane he used following three life-threatening operations.

Leon Higginbotham was a Philadelphia lawyer, legal scholar, jurist and statesman who did not give in to prejudice, despair, or age. From his appointment at the age of 35 to the federal bench until his death at age 70, he pursued civil rights, justice and equality for all Americans. His message was a positive one: while much had been accomplished, even more remains to be done. Initially studying engineering in college, he said he was motivated to study law when he was living off campus in an unheated attic, the outside temperature hit zero, and the university president denied the request to allow Higginbotham to live in a heated section of the dorm because "the law doesn't require us to." He said another incident served as a catalyst: when traveling as a member of his college's debate team, Higginbotham was denied a room in a hotel with his classmates and was required to stay at a rat-infested "colored YMCA."

After his graduation from Yale Law School in 1952, Higginbotham received a chilly reception and no job offers from law firms in Philadelphia. Undeterred, he began his career as a law clerk for Judge Curtis Bok of the Philadelphia Court of Common Pleas. Having demonstrated himself to be a capable and intelligent lawyer, he was hired by then District Attorney Richardson Dilworth. In 1954, he left the office to become a member of the first African American law firm in Philadelphia, Norris, Schmidt, Green, Harris, and Higginbotham. From 1960 to 1962, he continued to advance civil rights by serving as President of the Philadelphia chapter of the NAACP.

The Senate confirmed Judge Higginbotham's appointment to the federal bench in 1964, despite procedural obstacles in the Senate Judiciary Committee. When he parked his car on his first day as a judge, a guard yelled "Hey, boy" and told him the lot was reserved for judges. Judge Higginbotham later described the incident as "typical of a lot of things which have happened to both minorities and to women." Indeed, Higginbotham was also a strong advocate for women's rights. As the first African American trustee of Yale, he pushed for opening the University to women. His first law clerk was Eleanor Holmes Norton, who later became Eleanor Holmes Norton, who currently serves as the Delegate to the U.S. House of Representatives for the District of Columbia.

Higginbotham was a prolific writer who focused on facts and careful legal analysis. In his 13 years as a trial judge and his tenure on the Third Circuit Court of Appeals from 1977 to 1993, Higginbotham authored more than 600 published opinions, taught at the University of Pennsylvania, and wrote important books on the history of race in America in *Shades of Freedom* and *In the Matter of Color*. After retiring from the bench, Judge Higginbotham founded the South Africa Free Election Fund and helped South Africa's newly-elected government draft a new constitution.

Nelson Mandela said "Judge Higginbotham's work and the example he set made a critical contribution to the course of the rule of law in the United States and a difference in the lives of African Americans, and indeed the lives of all Americans. But his influence also crossed borders and inspired many who fought for freedom and equality in other countries. . . ." Jesse Jackson said of Judge Higginbotham: "What Thurgood Marshall and Charles Hamilton Houston were to the first half of this century, Judge Higginbotham was to the second half." After his funeral, Rosa Parks commented, "I think he really had a great idea that we are all equal people."

As Yale Law graduates, former District Attorneys and public servants, Higginbotham and I often crossed paths. I am grateful for the opportunity to have known this extraordinary man and his passionate and steadfast dedication to civil rights and the betterment of this country. As we celebrate Black History Month, we should consider the lessons we can learn from the life and words of Leon Higginbotham.

Mr. SPECTER. Just a few personal comments.

Mr. President, I knew Judge Higginbotham and am honored and proud to have called him a personal friend. He graduated from Yale Law School a little ahead of me. He found it very difficult to get a job because of racial prejudice, which was present in Philadelphia at the time in the early 1950s. It was the same era when William T. Coleman, Jr.—who had been a law clerk to Justice Felix Frankfurter and later was Secretary of Transportation in the Ford administration—could not find a job and had to travel to New York City to find a job.

Leon Higginbotham clerked for a very distinguished common pleas judge, Curtis Bok—really an outstanding scholar and later a Pennsylvania Supreme Court justice. He found a job with the district attorney, a very distinguished district attorney, Richardson Dilworth, who later became mayor of Philadelphia.

Judge Higginbotham then was a founding partner of an African-American law firm: Norris, Schmidt, Green, Harris & Higginbotham. That is what had to be done in those days to find a job and develop a law practice if you were an African-American in the city of Philadelphia—really across our country.

Senator CASEY has referred to the indignity Judge Higginbotham had as a student at Purdue, when he was excluded from living in a heated dormitory because it was not required by the law.

He was a noted scholar, an author, and wrote the books "In the Matter of Color" and "Shades of Freedom." In my prepared text, I comment about compliments paid to Judge Higginbotham by Nelson Mandela, Jesse Jackson, and Rosa Parks.

This is a good occasion—Black History Month—to pause for a few moments to pay tribute to a great American and a great jurist, a member of the Federal Trade Commission, a Federal judge at 35, and later chief judge of the United States Court of Appeals for the Third Circuit.

Mr. CASEY. Mr. President, I rise today in support of a resolution honoring the lifetime achievements of Judge A. Leon Higginbotham, Jr. The chairman of the Judiciary Committee, Senator LEAHY, as well as my colleague from Pennsylvania and ranking member of the Judiciary Committee, Senator SPECTER, join me as original co-sponsors of this resolution. We are honored to pay tribute to a remarkable lawyer, jurist, scholar and advocate whose story inspires us.

The Bible says, "There were giants in the earth in those days." Leon Higginbotham was a giant. He stood six feet six inches all and towered above most of the rest of us in his intellect, his compassion and his commitment to equality. Today, those who knew him and worked with him, and those who, like me, admired him from afar, have gathered in our Nation's Capital to honor his life and his legacy.

Aloysius Leon Higginbotham was born 80 years ago this month. The United States was about to enter the Great Depression and many Americans suffered under the yoke of racism and institutional, legalized segregation. Leon's young mother, who left school in the seventh grade, and his father, who worked in a Trenton, NJ factory, faced a world where most avenues to success were closed to African Americans.

Young Leon Higginbotham grew up in a household that valued hard work and education, yet the African-American community had few resources to support good schooling. "Separate but equal" grade schools offered a limited curriculum, small schoolhouses and often one teacher for multiple grades. This left black students effectively unable to gain admission to the nearby white high schools. In fact, in the four decades preceding Leon's entrance into

junior high, no black student from his school in Ewing Township, NJ had ever enrolled in a white high school. Without the required prerequisites, especially training in Latin, the doors to academic success were nailed shut.

Fortunately, Leon's parents believed those doors could be pried open. His mother, Emma Lee, who worked for a wealthy family, constantly told her son that education was the "sole passport to a better life." In a bold, unprecedented move, she negotiated Leon's entrance into one of the best high schools in Trenton. Despite having no foundation in Latin, Leon managed to pass his freshman course. Impressed by his intellectual ability, Leon's Latin teacher offered to tutor him over the summer. Between jobs as a busboy in a local hotel and as a laborer in factories, he rode his bicycle nearly 20 miles to his teacher's home, several times a week, to improve his Latin skills. Mirroring his father's work ethic and his mother's passion for learning, Leon overcame the odds and earned his high school diploma.

In 1944, at age 16, Leon enrolled in the engineering program at Purdue University, where the student body had 6000 white students and 12 black students. Leon and his 11 fellow students were required to live in the unheated attic of a campus building. As autumn became winter, snow found its way through the flimsy roof, and the 12 students shivered their nights away, wearing earmuffs, shoes and multiple layers of clothing to bed. As the Midwestern winter grew colder, Leon requested a meeting with the university president to negotiate for a warmer place to sleep, noting that all of the white students slept in heated dormitories. The president responded, "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." Leon found the president's comments especially troubling in light of the thousands of African Americans who were then serving their nation in World War II. He left the president's office determined to find a way both to serve his country and bring about lasting change.

Leon continued his academic pursuits at Purdue and became an avid debater, qualifying to attend the Big Ten debate championships. After being forced to, sleep in a YMCA overrun with mice, while his white teammates were lodged in a comfortable hotel, Leon finally decided to leave Purdue and enroll in Antioch College. His strong academic performance at Antioch persuaded members of the faculty and the board of trustees to encourage him to enroll in law school. Leon received an offer of assistance from a benefactor which would cover his first semester at Yale Law School, but Rutgers University offered him a full scholarship. Characteristically, Leon resisted pressure from friends and family and chose the steeper path, Yale.

He arrived at Yale with a cardboard suitcase and little understanding of the challenges that lay ahead. He was overwhelmed at first by the education and polish of his fellow students, many of them sons or relatives of lawyers, judges, or prominent politicians. As he recalled, "my father was a laborer, two books in the house. One, we had purchased, a Bible; the other, my mother had gotten out of the trash of one of the people she worked for, an old dictionary. . . . I did not begin Yale at the same starting line as many of my contemporaries."

Leon balanced his time between working at a corner store in New Haven and wrestling diligently with the law. As a research assistant to Prof. John P. Frank, Leon demonstrated "an extraordinary verbal talent" and achieved what Dean Wesley Sturges described as more honors in oral advocacy than anyone else in the law school at the time. Leon later said that the most significant event in his law school career was traveling to Washington, DC, to witness Thurgood Marshall's passionate advocacy before the Supreme Court in the *Sweatt v. Painter* case. From that moment on, Leon committed his considerable talents to the fight for what he called the "promise of freedom" for all people. The child who rode his bicycle to Latin lessons graduated from Yale Law School as the towering man with the deep baritone voice, who would succeed in a world almost unimaginable to his parents.

Leon decided to begin his legal career in Philadelphia. This was not an easy task in the Philadelphia of the early 1950s, but a few people recognized his potential and helped him become a clerk for Judge Curtis Bok of the Philadelphia Court of Common Pleas. He worked hard and soon became the youngest—and first ever African-American assistant district attorney—under Richardson Dilworth, who later served as mayor of Philadelphia. After 2 years in the DA's office, Leon left to found, with another future Federal judge, Clifford Scott Green, and others, Philadelphia's first African-American law firm, Norris, Schmidt, Green, Harris & Higginbotham. The Norris firm became the launching pad for a generation of successful African-American lawyers. At the same time, he pushed for social change in various roles, including president of the Philadelphia chapter of the NAACP, Special Hearing Officer for the United States Department of Justice, Commissioner of the Pennsylvania Human Rights Commission, and Special Deputy Attorney General of Pennsylvania. While juggling these public commitments, Leon always maintained close ties to the community as a director of numerous legal, political and nonprofit organizations.

In 1962, President John F. Kennedy appointed Leon to the Federal Trade Commission, making him the first African-American ever to serve on a Federal regulatory commission. Soon

thereafter, Kennedy recognized Leon's work as a lawyer and public servant and nominated him for a Federal judgeship in the Eastern District of Pennsylvania. However, his confirmation faced strong resistance and repeated delays engineered by some Members of the United States Senate. After President Kennedy's death, President Lyndon B. Johnson overrode the resistance to Leon's nomination by giving him a recess appointment to the Eastern District Court. At the age of 35, Judge Leon Higginbotham became one of the youngest men ever appointed to the Federal bench.

From the beginning of his career on the bench, Judge Higginbotham was known for his scholarly, well-written opinions and his imperturbable judicial temperament. His tenure was also marked by his focus on the generations to follow him, what many came to call his "people legacy." His warmth extended particularly to those on what he referred to as "the lower end of the Courthouse bureaucracy." The Judge permitted young clerks and staffers to accompany him in all his activities so they could learn the full nature of the legal profession. Students from Philadelphia public high schools could be found working as interns in his office. He soon developed a diverse entourage that became known as the "Higginbotham menagerie." Many of his proteges moved on to lead outstanding careers in the public arena. In fact, one of our congressional colleagues, Representative ELEANOR HOLMES NORTON of the District of Columbia, served as his first law clerk and is a living symbol of Judge Higginbotham's legacy.

In 1968, in the wake of the assassinations of Martin Luther King and Robert Kennedy, despair and violence escalated across our country. President Johnson repeatedly called on Judge Higginbotham for advice on how to restore hope and optimism in the hearts of the American people. Johnson recognized Judge Higginbotham's wisdom in the face of crisis and appointed him to the Commission on Causes and Prevention of Violence. Judge Higginbotham used that opportunity to push for ways to quell the violence of the time and to shrink the divide between Black and White America. The Judge also exerted his influence beyond racial issues and advocated for women's rights. As a trustee of the Yale Corporation, he successfully fought to allow undergraduate enrollment for women at Yale College.

In 1977, Judge Higginbotham's accomplishments, both on the bench and in civic matters, led President Jimmy Carter to appoint him to the United States Court of Appeals for the Third Circuit. Judge Higginbotham sat on the Third Circuit for 16 years, served as chief judge from 1989 to 1991, and as senior judge through the completion of his judicial career in 1993. He described his judicial philosophy as "evolutionary in terms of what is fair and just in

a society." Through his rulings and subsequent writings, he reminded us that when our country was founded, the hope and promise of the Declaration of Independence and the Constitution were tarnished by the fact that the United States had over 500,000 slaves. Judge Higginbotham believed that equality for all under the law requires progressive interpretation of our founding documents and continued focus on the inequities that still exist.

As he put it, "... It is possible that with the obvious pride we have in the few who make it, that we may fail to recognize how long the road behind us is and how many there are on that road who still are deprived by history of the utilization of their talents. ... We cannot become anesthetized by the success of a few and oblivious to the deprivation of the many."

In 1993, Judge Higginbotham retired from the bench and began a new phase of his quest to achieve racial equality under the law. Even after three decades of remarkable public service, Judge Higginbotham took no time to rest, often quoting Robert Frost's words, "I have promises to keep. And miles to go before I sleep." He focused his post-judicial life on the future, often asking who in the next generation would "carry the baton into the new millennium." As a professor at Harvard University, he poured his energy and passion into preparing tomorrow's leaders to take that baton. He taught numerous courses and many of his students recall his oft-repeated words: "If you do not stand up for something, you'll fall for anything."

Judge Higginbotham's work as a scholar and historian helped transform our Nation's perception of race in America. His thorough research of nearly 250 years of legal documents involving racial issues formed the basis for a flood of books and articles in which he dissected the many aspects of discrimination embedded in America's legal system. For example, he hosted a conference on the centennial of *Plessy v. Ferguson*, using the occasion to urge the young minds of the next generation to take full advantage of the hard-won opportunities created by *Brown v. Board of Education*. He once commented to a group of recent law school graduates, "What should be our theme to America? ... It is that in the long, bloody and terrible history of race in America, there is no more time for foolishness." His words and his actions still compel each of us to face the ugly parts of our Nation's history as well as the glorious ones, and to respond, with commitment, to the public arena.

Many remember Judge Higginbotham as what we now call a multitasker, especially during his retirement. When he wasn't teaching, he was frequently in a car on the way to the airport, dictating one of the over 100 speeches he delivered each year. When not addressing audiences, he often could be found testifying in front of the Senate Judiciary Committee, attending monthly meetings of the United States Commission on Human Rights, serving on nu-

merous boards of trustees, including the New York Times and National Geographic, or arguing voting rights cases on behalf of the Congressional Black Caucus before the Supreme Court. He extended his fervor for equal justice overseas as a consultant to President Nelson Mandela on the formation of the South African Constitution and as an advocate for democracy education in South Africa.

Not surprisingly, Judge Higginbotham was recognized with numerous awards for his leadership as jurist, historian, scholar, advocate, mentor and ordinary citizen. His many honors include the Presidential Medal of Freedom, the Raoul Wallenberg Humanitarian Award, the NAACP Spingarn Medal, the ACLU Medal, the National Human Relations Award from the National Conference of Christians and Jews, the Silver Gavel Award from the American Bar Association, the Lifetime Achievement Award from the Philadelphia Bar Association, the Outstanding Young Man Award from the Philadelphia Chamber of Commerce, and honorary degrees from over 60 universities.

Judge Higginbotham is remembered by many, including me, as a true American hero: a giant among men, who began his life in the most modest of circumstances, yet rose to extraordinary heights. Rosa Parks, another American whose own story continues to inspire us, appropriately noted after his passing, "I think he really had a great idea that we are all equal people." Rosa Parks' words capture what I believe to be the essence of Judge Higginbotham's legacy: he helped pry open the doors leading to the American dream for ordinary people from all walks of life.

So in this month when we celebrate the achievements of African Americans, I am honored to pay tribute to Leon Higginbotham's life of courage and commitment to justice; of integrity and intellect; his life of advocacy and action, service and scholarship. Judge Higginbotham's life was a testament to the enduring power of the words "we shall overcome." Leon Higginbotham helped our Nation move closer to the ideal expressed on the building across the street from this chamber: "Equal Justice under Law." We are proud to have his wife, Evelyn Brooks Higginbotham, as well as numerous family members, friends, former clerks and colleagues here with us today as we honor his life and work and seek to keep the flame of Leon Higginbotham burning ever brightly.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3979. Mr. FEINGOLD (for himself, Mr. WEBB, Mr. TESTER, Mr. BIDEN, Mr. SANDERS, Mr. KENNEDY, Mr. MENENDEZ, Mr. AKAKA, Mr. DODD, and Mr. OBAMA) proposed an amendment to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the For-

eign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

#### TEXT OF AMENDMENTS

**SA 3979.** Mr. FEINGOLD (for himself, Mr. WEBB, Mr. TESTER, Mr. BIDEN, Mr. SANDERS, Mr. KENNEDY, Mr. MENENDEZ, Mr. AKAKA, Mr. DODD, and Mr. OBAMA) proposed an amendment to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; as follows:

On page 52, line 2, strike the quotation marks and the second period and insert the following:

#### **"SEC. 709. ADDITIONAL SAFEGUARDS FOR COMMUNICATIONS OF PERSONS INSIDE THE UNITED STATES.**

"(a) LIMITATIONS ON ACQUISITION OF COMMUNICATIONS.—

"(1) LIMITATION.—Except as authorized under title I or paragraph (2), no communication shall be acquired under this title if the Government knows before or at the time of acquisition that the communication is to or from a person reasonably believed to be located in the United States.

"(2) EXCEPTION.—

"(A) IN GENERAL.—In addition to any authority under title I to acquire communications described in paragraph (1), such communications may be acquired if—

"(i) there is reason to believe that the communication concerns international terrorist activities directed against the United States, or activities in preparation therefor;

"(ii) there is probable cause to believe that the target reasonably believed to be located outside the United States is an agent of a foreign power and such foreign power is a group engaged in international terrorism or activities in preparation therefor; or

"(iii) there is reason to believe that the acquisition is necessary to prevent death or serious bodily harm.

"(B) ACCESS TO COMMUNICATIONS.—Communications acquired under this paragraph shall be treated in accordance with subsection (b).

"(3) PROCEDURES FOR DETERMINATIONS BEFORE OR AT THE TIME OF ACQUISITION.—

"(A) SUBMISSION.—Not later than 120 days after the date of enactment of the FISA Amendments Act of 2008, the Attorney General, in consultation with the Director of National Intelligence, shall submit to the Foreign Intelligence Surveillance Court for approval procedures for determining before or at the time of acquisition, where reasonably practicable, whether a communication is to or from a person reasonably believed to be located in the United States and whether the exception under paragraph (2) applies to that communication.

"(B) REVIEW.—The Foreign Intelligence Surveillance Court shall approve the procedures submitted under subparagraph (A) if the procedures are reasonably designed to determine before or at the time of acquisition, where reasonably practicable, whether a communication is to or from a person reasonably believed to be located in the United States and whether the exception under paragraph (2) applies to that communication.

"(C) PROCEDURES DO NOT MEET REQUIREMENTS.—If the Foreign Intelligence Surveillance Court concludes that the procedures submitted under subparagraph (A) do not meet the requirements of subparagraph (B),