

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),