



A. Leon Higginbotham, Jr.

Born: February 25, 1928, in Trenton, New Jersey  
Died: December 14, 1998, in Boston, Massachusetts

**Federal Judicial Service:**

Judge, U.S. District Court for the Eastern District of Pennsylvania

Received a recess appointment from Lyndon B. Johnson on January 6, 1964, to a seat vacated by J. Cullen Ganey; nominated to the same position by Lyndon B. Johnson on February 3, 1964. Confirmed by the Senate on March 14, 1964, and received commission on March 17, 1964. Service terminated on November 7, 1977, due to appointment to another judicial position.

Judge, U.S. Court of Appeals for the Third Circuit

Nominated by Jimmy Carter on September 19, 1977, to a seat vacated by Francis Lund Van Dusen.

Confirmed by the Senate on October 7, 1977, and received commission on October 11, 1977. Served as chief judge, 1990-1991. Assumed senior status due to certified disability on January 31, 1991.

Service terminated on March 5, 1993, due to retirement.

**Other Federal Judicial Service:**

Judge, Foreign Intelligence Surveillance Court of Review: 1979-1986; presiding judge: 1979-1986.

**Education:**

Antioch College, B.A., 1949

Yale Law School, LL.B., 1952

## **Professional Career:**

Law Clerk, Honorable Curtis Bok, Court of Common Pleas of Philadelphia County [Pennsylvania]: 1952-1953  
Assistant District Attorney, Philadelphia County, Pennsylvania: 1953-1954  
Private Practice, Philadelphia, Pennsylvania: 1954-1962  
Special Deputy Attorney General, Commonwealth of Pennsylvania: 1956-1962  
Special Hearing Officer for Conscientious Objectors, U.S. Department of Justice: 1960-1962  
Commissioner, Pennsylvania Human Relations Commission: 1961-1962  
Commissioner, Federal Trade Commission: 1962-1964  
Member, Judicial Conference of the United States: 1990  
Private Practice, New York City and Washington, DC: 1993-1998  
Professor, Harvard University: 1993-1998

## **Other Nominations/Recess Appointments:**

Nominated to U.S. District Court for the Eastern District of Pennsylvania, September 25, 1963; no Senate vote.

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## Judicial Biography

\*As a result of President Kennedy's assassination on November 22, 1963, it fell to President Lyndon B. Johnson to fill vacancies on the federal courts. In January 1964, Johnson gave a recess appointment to A. Leon Higginbotham, Jr., age thirty-five, who had been nominated by Kennedy before his death. Higginbotham was the first African-American to have been chosen as a judge in the Eastern District's history. While white supremacist Mississippi Senator James Eastland, Chair of the Senate Judiciary Committee, for a time put obstacles in his way, Higginbotham was ultimately confirmed and commissioned in March.

He was born and grew up in Trenton, New Jersey. His college career began at Purdue University, but after suffering racial discrimination, he transferred to Antioch College from which he graduated. He earned his law degree at Yale Law School. Thereafter, he served as a law clerk to Judge Curtis Bok of the Philadelphia Court of Common Pleas No. 6, and then as an Assistant District Attorney under Richardson Dilworth, who had truly integrated the District Attorney's office. Higginbotham subsequently obtained a position with the law firm headed by Austin Norris, the legendary African-American Philadelphia lawyer. This was a time when no white firm would hire a lawyer of his race, no matter how well-qualified. Over the years a number of associates and partners in the Norris firm became federal or state judges. When in private practice, Higginbotham served for a period as the President of the Philadelphia Chapter

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\* The following material is excerpted from JUDGE HARVEY BARTLE, III, MORTALS WITH TREMENDOUS RESPONSIBILITIES, A HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, 3-12 (Saint Joseph's University Press, 2011). Reproduced with the permission of the author, Judge Harvey Bartle, III, and the publisher, Saint Joseph's University Press.

of the NAACP. President Kennedy appointed Higginbotham to the Federal Trade Commission in 1962. Within a short time, he was sitting on the bench in the Eastern District.

Higginbotham had not lobbied for a federal judgeship and did not have a close relationship with any influential Pennsylvania political figures. One day in 1963, he received a call out of the blue from Congressman Green. As Higginbotham recounted, Green told him, "I've got good news for you . . . You've always been my number one candidate for the vacant judgeship." Green made it clear he had been "battling" Senator Clark, for whom Green had some uncomplimentary remarks, to make the appointment happen. Five minutes later, Higginbotham's phone rang again, and this time it was Senator Clark. The Senator stated, "Leon, you can't believe it . . . I've finally gotten Bill Green to see the light . . . I have always been pushing for you. . . ." Clark added that Green had "opposed it . . . unless you got it, I was going to cause problems on the Judicial Committee." According to Higginbotham, he later learned that the real story was somewhat different than what he had heard on the phone from either of his two prominent callers. Attorney General Robert F. Kennedy had warned Clark and Green that if they could not agree on a candidate, he was going to recommend to President Kennedy that Higginbotham be nominated. It appears that Green and Clark were hastily jumping aboard the train just as it was pulling out of the station.

Higginbotham chose his law clerks not simply based on their academic achievements but also on their degree of social consciousness. He encouraged his fellow judges to do likewise.

On one occasion, following the assassination of Martin Luther King, Jr., in April 1968, he and Circuit Judge William H. Hastie calmed a crowd gathered outside the courthouse. Judge Higginbotham's stature was such that President Johnson invited him, along with other leaders, to the White House for a conference on how to deal with the turmoil in the country as a result of King's death.

Higginbotham, who was a very tall man with a deep, rich voice, was a renowned advocate for civil rights and authored two award-winning books, *In the Matter of Color* and *Shades of Freedom*. In 1977, President Carter named him to the Court of Appeals for the Third Circuit. A recipient of the Presidential Medal of Freedom, he will always be remembered as a heroic and passionate spokesman for social justice and racial equality.

Because of the civil rights legislation passed in the 1960's, the Court's docket in the 1970's and 1980's was filled with cases alleging race and gender discrimination, primarily but not exclusively discrimination in the work place. Most were actions brought by individuals who sought damages or other relief only for themselves.

Judge Higginbotham dealt with claims of racial discrimination against Local 542 of the International Union of Operating Engineers and several contractor associations because of the failure to hire African-Americans for construction jobs. These defendants moved to disqualify him from the case due to a speech he had delivered before the Association for the Study of Afro-American Life and History. Judge Higginbotham forcefully rejected the effort as meritless:

I concede that I am black. I do not apologize for that obvious fact. I take rational pride in my heritage, just as most other ethnics take pride in theirs. However, that one is black does not mean, ipso facto, that he is anti-white; no more than being Jewish implies being anti-Catholic, or being Catholic implies being anti-Protestant. As do most blacks, I believe that the corridors of history in this country have been lined with countless instances of racial injustice. This is evident by the plain historical fact that for more than two and a half centuries, millions of blacks were slaves under the rule and sanction of law – a fate which confronted no other major minority in this country . . . To suggest that black judges should be so disqualified would be analogous to suggesting that the slave masters were right when, during tragic hours for this nation, they argued that only they, but not the slaves, could evaluate the harshness or justness of the system.

This case was hotly contested for a number of years, but eventually a Consent Decree was entered. The Court to this day continues to monitor compliance with it.

Judge Higginbotham had on his docket a group of related antitrust cases, although involving a far different activity than the sale of television sets. His concerned professional hockey. In *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*, and other related cases, the basic issue was “whether through their reserve clause, affiliation agreements, and market power dominance, the National Hockey League has violated the federal antitrust laws.” Under a reserve clause in a contract, a player or coach is not permitted to play or work for a competing organization without specific approval of that player’s or coach’s employer. The National Hockey League had grown from a small Canadian organization in 1917 to what Judge Higginbotham characterized as a “position of substantial wealth, power, broad spectator interest, international recognition and many superstars, all crescendoing into huge profits for both its owners and players” in the 1970’s. Judge Higginbotham wrote memorably at the outset of his opinion, “Despite the thousands of words uttered on this record by all parties about the glory of the sport of hockey and the grandeur of its superstars, the basic factors here are not the sheer exhilaration from observing the speeding puck, but rather the desire to maximize the available buck.”

Judge Higginbotham held that professional hockey operated in interstate commerce and was subject to the antitrust laws. He refused to extend to professional hockey the Supreme Court’s holding, articulated by Justice Oliver Wendell Holmes in 1922, that baseball was exempt from the antitrust laws because it did not engage in interstate commerce. After a hearing and making extensive findings of fact and conclusions of law, he granted a preliminary injunction restraining the National Hockey League from enforcing the reserve clause in any contract against a player or coach. The Court found that there was a clear and substantial likelihood the National Hockey League exercised monopoly power in violation of § 2 of the Sherman Act through their interlocking agreements with the various National Hockey League teams, the reserve clause in players’ contracts, and the agreements between the National Hockey League and minor and amateur hockey organizations. Ultimately, all these actions were either settled or dismissed.

Judge Higginbotham was elevated to the Third Circuit in 1977 and served as Chief Judge there from 1990 to 1991. He retired from the bench on March 5, 1993. After retiring from the

bench, he joined the law firm of Paul, Weiss, Rifkind, Wharton & Garrison and accepted a position at Harvard University's John F. Kennedy School of Government as a professor of public service jurisprudence. He died on December 14, 1998 in Boston, Massachusetts.