

Supreme Court Bar Admission (1931)

*John Q. Barrett**

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In late April 1931, Robert Jackson, age 39, dictated a letter in his Jamestown, New York, law office to his mentor and friend John Lord O'Brian in Washington, D.C.:

My dear Mr. O'Brian:-

I find it necessary to obtain admission to the United States Supreme Court in order to appeal a case in which I am patiently waiting the announcement of defeat in the [New York] Court of Appeals. As it is necessary to have the motion made by a member of that bar, it occurred to me that perhaps you would be willing to do it.

Wholly apart from the fact that it would be a convenience to me, I would much appreciate having you vouch for me. I am to be in Washington during several days of the American Law Institute [(ALI)] meeting [in May] and as I understand it, no particular day is set for [Supreme Court bar] admissions. I would, however, adapt myself to your convenience in the matter.

Very sincerely yours,

/s/ Robert H. Jackson^[1]

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¹ Robert H. Jackson to Hon. John Lord O'Brian, Apr. 21, 1931, in John Lord O'Brian Papers, Special Collections, Charles B. Sears Law Library, University at Buffalo Law School, State University of New York, Amherst, NY ("JLO Papers, Buffalo"), Box 54, Folder 15.

John Lord O’Brian, then age 57, was one of the leading lawyers in the United States. Born in Buffalo, New York, he earned his undergraduate degree at Harvard University and his law degree at Buffalo Law School. In 1909, President Theodore Roosevelt nominated O’Brian to serve as United States Attorney for the Western District of New York. O’Brian continued in that position under Presidents Taft and Wilson. During the World War (later renamed World War I), O’Brian headed the War Emergency Division in the United States Department of Justice (“DOJ”) in Washington, where his responsibilities included prosecuting espionage and sabotage cases.

During the War years, O’Brian came to know young Robert Jackson. In 1917, some of O’Brian’s close friends recruited Jackson to move from Jamestown, the smaller city where he had apprenticed and then begun his law practice, to Buffalo, one of the country’s ten largest cities. Jackson took a position with a prominent Buffalo law firm. He and his wife Irene lived in a downtown park neighborhood, near his office and the state and federal courthouses. Jackson became one of Buffalo’s very active, notably talented young trial and appellate lawyers.

Following the War, O’Brian returned to Buffalo and entered private practice. Jackson, recruited back to Jamestown to serve briefly as the city’s corporation counsel, soon built the private practice there that took him to prominence in New York State and nationally.

In 1929, O’Brian returned to public service in Washington. President Hoover appointed him Assistant to the Attorney General. O’Brian’s responsibilities at DOJ included heading the Antitrust Division. He was serving in that position, arguing regularly before the Supreme Court, when he received Jackson’s April 1931 letter.

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Mr. O’Brian promptly answered Jackson’s letter. “[N]othing would give me more pleasure than to move your admission” to the Supreme Court bar, O’Brian wrote to “Dear Mr. Jackson” on April 29, 1931. Unfortunately, O’Brian continued, the Court would soon conclude hearing arguments for the Term, and it was not scheduled to hear motions (such as attorney admission motions) on the particular days in May when Jackson would be in Washington for the ALI meeting. O’Brian added that he

SUPREME COURT BAR ADMISSION (1931)

would be away from Washington on May 4th, one date on which the Court would be hearing motions, but he added that he would “be glad to arrange with the Solicitor General [Thomas D. Thacher] to move your admission in my place.”²

After further exchanges, Jackson and O’Brian settled on Monday, May 18th as a Supreme Court date when Jackson could be in Washington for O’Brian to move his admission. But early that morning, Jackson sent O’Brian a telegram cancelling the plan:

Called to Philadelphia on matter immediate importance so
will not appear for admission Supreme Court today[.] If you
are in city May twenty fifth will come then[.] If not can do it
later[.] Very grateful your trouble=
Robert H Jackson.³

O’Brian replied the next day that May 25th would work for him. He reminded Jackson (“Dear Robert”) to make sure that his papers were properly on file at the Court.⁴

Thus on Monday, May 25, 1931, the Supreme Court—Chief Justice Charles Evans Hughes and Associate Justices Oliver Wendell Holmes, Jr., Willis Van Devanter, James C. McReynolds, Louis D. Brandeis, George Sutherland, Pierce Butler, Harlan Fiske Stone and Owen J. Roberts—ordered the admission of Robert H. Jackson of Jamestown, New York, to practice before the Court. It also granted admission that day to thirty other attorneys, including one who was a woman (unusual then) and four others (all men) who were members of one Rochester, New York, family.⁵

During the remainder of that Supreme Court session, as it announced thirteen decisions and other orders, Jackson left the courtroom. He went to the Clerk’s Office and completed the ceremony of subscribing the roll of admitted attorneys. By the time he was done, the Court had

² John Lord O’Brian to Robert H. Jackson, Apr. 29, 1931 (unsigned carbon copy), in JLO Papers, Buffalo, Box 54, Folder 15.

³ Postal Telegraph, Robert H. Jackson to Hon. John Lord O’Brian, May 18, 1931, in JLO Papers, Buffalo, Box 54, Folder 15.

⁴ John Lord O’Brian to Robert H. Jackson, May 19, 1931 (unsigned carbon copy), in JLO Papers, Buffalo, Box 54, Folder 15.

⁵ See JOURNAL OF THE COURT, May 25, 1931, at 328. The woman was Helen K. MacDonald of Detroit, Michigan. The Rochester relatives (I assume) were Harvey F., Thomas H., John W. and Francis K. Remington. *See id.*

SUPREME COURT BAR ADMISSION (1931)

adjourned for the day and O’Brian had departed. So the next day, back in Jamestown, Jackson wrote O’Brian to explain what had happened, and to “express[] appreciation for your kindness in vouching for me before the Supreme Court.”⁶

* * *

Robert Jackson soon would begin to argue cases—ultimately more than fifty—before the Supreme Court. Ten years later, he was appointed to the Court, where, of the justices who had admitted Jackson to the Court’s bar, Harlan Stone and Owen Roberts were still serving.

Earlier, in 1937, Jackson was appointed and served for a year as a successor to O’Brian as Assistant Attorney General heading the Antitrust Division. They remained close colleagues and friends for all of Jackson’s life, especially when O’Brian returned from Buffalo to Washington and public service (for the third time) during World War II, and as he thereafter remained to practice law with Covington & Burling, a top Washington law firm that included a number of close Jackson friends.⁷

* * *

Jackson’s Supreme Court bar admission had, two decades later, a unique and meaningful echo. On January 28, 1952, John Lord O’Brian moved that the Supreme Court admit New York City attorney William Eldred Jackson, age 32, to practice before it. The Court, including his father Justice Jackson, granted the motion.⁸

⁶ Robert H. Jackson to Hon. John Lord O’Brian, May 26, 1931, in JLO Papers, Buffalo, Box 54, Folder 15. An image of this document is attached at the end of this file.

⁷ See generally John Lord O’Brian, *Introduction* (pp. 7-16), in CHARLES S. DESMOND, PAUL A. FREUND, JUSTICE POTTER STEWART & LORD SHAWCROSS, MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR (New York: Columbia Univ. Press, 1969) (with introductions by Whitney North Seymour, O’Brian, Judge Charles D. Breitel and Justice John M. Harlan).

⁸ See JOURNAL OF THE COURT, Jan. 28, 1952, at 108. In addition to Bill Jackson, Mr. O’Brian also moved the admissions that day of Francis T.P. Plimpton of New York City and Charles A. Brind, Jr., of Albany. Other notable movants included Solicitor General Philip B. Perlman, Paul V. McNutt, Robert L. Stern and Clark M. Clifford. Of thirty attorneys who were admitted, two (Edith C. Cahill of Los Angeles and Diana J. Auger of Boston) were women. See *id.*