Remarks at the Dedication of John Lord O'Brian Hall

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I have been asked to speak today of John Lord O'Brian's public service. I approach the task, I confess, with considerable trepidation. There is the inevitable sense of inadequacy; only an historian, which I am not, is capable of an adequate evaluation of events of which he knows for the most part only secondhand. There is the danger that a focus on a single aspect of a life that was so complete, so full in its variety, and so much larger than the sum of its parts, may seem to diminish the totality of that life. Finally, public service, to John Lord O'Brian, was so much a part of his work as a lawyer that one cannot truly isolate his public service from his major contributions to the law.

Apart from these qualifications, I have been given a formidable assignment, for to John Lord O'Brian life was to be lived fully. In 1890, six years before he graduated from Harvard College, an inscription composed by President Charles William Eliot had been placed on a gate to Harvard Yard: "Depart better to serve thy country and mankind." Few men have more completely complied.

Yet I venture to think that the "service" which John Lord O'Brian gave to his country and mankind was never to him a duty, but rather an opportunity. Not an opportunity for himself—there may never have been a more modest and selfless man—but an opportunity to be useful in ways which his talents made possible. "Talents" is perhaps not quite the right word. His achievements were due to more than ability, although there was no lack of that. What was important is nowhere better described than in his own words, speaking of Mr. Justice Jackson:

"His success... came... not only from his unusual ability as a lawyer, but also from the character of his own personality and the great charm which he exercised over everybody with whom he came in contact."

John Lord O'Brian entered the public arena for the first time at the age of 33, when he took the oath of office as an Assemblyman in Albany on January 1, 1907. Even before that, however, he had found opportunities here in Buffalo to

be more than a lawyer. Almost immediately after he received his LL.B. from the Buffalo Law School in the class of 1898—the tenth class to graduate from the School—he began to teach there as an instructor in insurance law, without salary, and continued to do so for 14 years. At the same time, he gave lectures on medical jurisprudence at the medical school. In 1903 he became a trustee of the Law School, and continued as a member of the University Council for more than a quarter century.

Even my brief researches indicate that his 26 years on the Council were anything but routine. Those were the years which saw the development of the College of Arts and Sciences. First, the Council developed a series of extension lectures in English literature under the sponsorship of a Council Committee of which Mr. O'Brian was secretary. When that lapsed for lack of funds, the Council hastily assembled a volunteer faculty willing to teach in their spare time in order that the recent demand of the American Medical Association for one year of college grade education in the humanities prior to medical school could be met. Those were also the years of searching for, and seeking funds to acquire, a campus. In all of these efforts Mr. O'Brian was active. And I believe he considered as perhaps his major contribution to the Council his efforts as chairman of the committee that selected, and then persuaded, Dr. Samuel P. Capen to become University Chancellor in 1920.

But let us return to Albany in 1907. January of that year witnessed the inauguration of Charles Evans Hughes as Governor. Even as a freshman Assemblyman Mr. O'Brian attained a strong position in the Assembly as a member of the Ways and Means Committee and the Cities Committee. The autobiographical notes of Mr. Hughes which have recently been published acknowledge the valuable support which Assemblyman O'Brian gave the Governor. Mr. O'Brian campaigned for the Governor in 1908, and was re-elected with him in that year.

Before the end of Mr. O'Brien's second term as Assemblyman, he made his first entrance into an office of the federal government. In February, 1909, he was appointed by President Theodore Roosevelt to be United States Attorney for the Western District of New York. He remained in that post throughout the administration of President Taft, and for nearly two years of the administration of President Wilson. His tenure under three presidents is an indication of the competence with which he discharged the responsibilities of that office.

Shortly after returning to private practice in Buffalo in 1914, Mr. O'Brien became intimately involved in the efforts to effect a complete revision of the New York State Constitution. He was a member of the so-called Committee of Thirty-Nine—a group which hoped to establish a basic reform program for the consideration of the Constitutional Convention. When the convention met, Mr. O'Brien, as one of the elected delegates at large, became Chairman of the Rules Committee, which had powers for the convention similar to those of the Rules Committee for the House of Representatives—essentially, the mechanics of running the convention. I have often heard Mr. O'Brien speak with pride of the
work of that convention, and of the leadership contributed by its chairman, Elihu Root. In any event, the end product was rejected by the voters. As with similar attempts in other states in more recent times, a meritorious whole fell victim to a confederation of groups whose interests would be adversely affected. I should add, however, that within a decade, at the urging of Governor Alfred Smith, and with the aid of Mr. O’Brien among others, the more important reforms proposed by the convention were separately adopted.

Then came the war—World War I. It was as inevitable then, as it was a quarter century later, that the talents of John Lord O’Brien would be enlisted. The first call, from Attorney General Thomas W. Gregory, was to prosecute the famous Franz von Rintelen conspiracy case. It is a measure of the extent to which America was prepared for war that a conspiracy involving the use of a half million dollars in German funds to try to persuade American labor leaders to call strikes against the manufacturers of munitions and other war-related commodities had to be prosecuted under the Sherman Antitrust law. The prosecution was successful; von Rintelen and six of his co-conspirators were tried and convicted.

That was only the prelude. After a few months as Chairman of the Draft Board of Appeals for Western New York, to which Mr. O’Brien had been appointed by Governor Whitman, the call again came from Attorney General Gregory in the fall of 1917, this time to ask Mr. O’Brien to assume responsibility for all the war-related activities of the Department of Justice. As head of the War Emergency Division, as it was known, he had vast responsibilities—for registration and possible internment of enemy aliens, and for the prosecution of sabotage, espionage and other offenses. The temper of those times, which we may have forgotten now, made that position the focus of the hates and fears of thousands upon thousands of people—many accusing the Department of ineffective and inadequate prosecutorial vigor, and some, though not so many, protesting what they believed to be utterly unconstitutional imprisonments. With the full support of the Attorney General, Mr. O’Brien successfully maintained a firm but moderate course. Vested under the Alien and Sedition Act of 1798 with an unreviewable power to intern alien enemies, he personally reviewed the files of some 6,000 persons who had been arrested under Presidential warrant. Only about 2,300 were actually interned.

The Espionage Act, which became law in 1917, posed perhaps the greatest challenge. In the hands of a vindictive or fanatical prosecutor, it was a dangerous threat to personal liberties. As Mr. O’Brien said at the time, it “gave the dignity of treason to what were often neighborhood quarrels or barroom brawls.” As many as a thousand letters a day reached the Department, calling attention to acts or individuals thought to be seditious. Mr. O’Brien’s instructions to the United States Attorneys evidence his own view. The Act, he directed,

should not be permitted to become the medium whereby efforts are made to suppress honest, legitimate criticism of the administration or
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discussion of government policies. . . . Protection of loyal persons from unjust suspicion and prosecution is quite as important as the suppression of actual disloyalty.

It is appropriate to note, however, that it was John Lord O'Brian who successfully supported in the Supreme Court the conviction under the Act of one Schenck, who would have long since been forgotten but for the fact that it was in that case that Mr. Justice Holmes laid down the famous “clear and present danger” test under the first amendment.

A further aspect of the concern of Mr. O'Brian for civil liberties followed the armistice. With the Assistant to the Attorney General, Mr. O'Brian reviewed the files of every person sentenced during the war under the wartime statutes, and in each case made a recommendation to the Attorney General as to what would be a just sentence. The recommendations were adopted without change by the Attorney General, and on his recommendation were put into effect by President Wilson.

There is a footnote to all of this which in later years gave Mr. O'Brian considerable amusement—something which he once said he would “prefer to whisper in dark corners.” The Bureau of Investigation in the Department of Justice, which had been created in March, 1909, became very much involved in the work of the War Emergency Division. Among those whom Mr. O'Brian recruited was J. Edgar Hoover. Some time after Mr. O'Brian had returned to Buffalo, Mr. Hoover assumed charge of what was known as the General Intelligence Division—the successor to the War Emergency Division—and in 1924 was appointed director of the F.B.I.

During the next decade Mr. O'Brian practiced law in Buffalo, but continued to respond to calls for public service. One, at least, should be mentioned. For two years, in 1925 and 1926, he was active as Vice Chairman of the Committee on the Reorganization of the New York State Government. Unlike many modern counterparts, the Committee was unusually successful in effecting far-reaching reforms in the state government structure.

In 1929, Washington called again, when President Hoover named Mr. O'Brian an Assistant Attorney General in charge of the Antitrust Division. Short of the Attorney General himself, no one in the Department has a more difficult and responsible position. Of the many actions begun during the three years in which Mr. O'Brian held that position, and of the 20-odd cases which he argued in the Supreme Court during that time, no more need be said than that in the end Mr. O'Brian had the full respect of not only the Court, but of the business community as well.

Again there was almost a decade of practice in Buffalo. This time, the calls for his help in public affairs were more numerous. Some of the calls reflected the appreciation of his wisdom and breadth of understanding. In 1931, he was elected by the state legislature to be a Regent of the University of the State of New York—a post he held for the next 17 years. In 1936, he was elected an
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Overseer of Harvard University.

Some of the calls reflected his reputation as a superb lawyer. In 1935, the Tennessee Valley Authority retained him to defend the constitutionality of the act which created it. The decision by Chief Justice Hughes in 1936, upholding its constitutionality, was the first victory in the Supreme Court won by the administration of President Franklin D. Roosevelt. Following that victory Mr. O’Brien was again engaged by the Board of TVA to defend another case brought by a number of public utility companies. A major witness for the companies, it might be noted, was Wendell Willkie. Again, in 1939, the Supreme Court held for Mr. O’Brien.

Finally, there was a call to public service by the New York State Republican party. While Mr. O’Brien had been a delegate to the New York Republican convention as early as 1910, and had been a delegate to the Republican National Conventions in 1916 and 1920, he had not sought an elective office since 1913, when he was narrowly defeated for mayor of Buffalo. In 1938, however, somewhat against his preferences, since he was still engaged in defending the Tennessee Valley Authority, he received the Republican nomination for United States Senator. Having agreed to run, he campaigned hard. He carried 57 of the 61 counties in the state, but lost to Robert F. Wagner in the downstate vote. Undismayed, he returned to the TVA case, which the Court had postponed until after the election.

In 1941, Washington called again. President Roosevelt, acting on the unanimous recommendation of the Board of the Office of Production Management—later, the War Production Board—asked Mr. O’Brien to serve as its General Counsel. Although it meant a great reduction in income—the position paid $9,000 a year—Mr. O’Brien accepted. In the course of a few months he brought together under him what lawyers still think of as possibly the greatest assemblage of legal talent ever to serve a Washington agency. The quality of his and their service during the next four years is best told by those with whom he worked. Secretary of State Stettinius: “You leave with the respect, confidence and admiration of all with whom you have worked.” Attorney General Biddle: “It is pleasant to remember your wisdom and coolness.” Co-Chairman of the War Production Board Donald M. Nelson: “Neither you nor your staff has ever wandered from the straight and narrow path of the public interest.” And finally, President Truman, in awarding to John Lord O’Brien the Presidential Medal of Merit:

He served [the War Production Board] with distinction and gave assistance of inestimable value in the formulation of important policies. He brought with him high professional attainments and demonstrated a marked devotion to duty, perseverance, administrative ability, and a deep sense of public service.

From 1945 until his death on April 10, 1973, in his 99th year, Mr. O’Brien
practiced law in Washington, D.C. Mine is not the assignment to speak of his professional achievements during that period. Suffice it to say that they were many and varied. As the acknowledged dean of the American bar, he represented not only corporations but individuals as well. His wise counsel in several international controversies won him new fame as an international lawyer, as well as decorations from several foreign governments. In a word, he continued to add lustre to an already illustrious career.

However, neither the demands of an active practice, nor the fact that he had then reached his three score and ten, diminished his willingness to serve in the public interest. In 1948, he accepted appointment by President Truman of the chairmanship of a panel to deal with a strike threatened at the atomic energy plant at Oak Ridge, Tennessee. During the Korean war he became one of the four public members of a National Advisory Board on Mobilization Policy.

These appointments, important as they were to the nation, are overshadowed by achievements in two other areas, each of which evidences Mr. O'Brien's dedication to fundamental morality and his broad compassion. The first of these were his efforts to rally America to question what he saw as a dangerous erosion of human rights which was occurring as a result of government measures designed to prevent the spread of ideas thought to be subversive. He spoke to that issue at the New York State Bar Association, and followed it with a speech on "Law and Freedom" at Columbia University. The culmination was his Godkin Lectures at Harvard on "National Security and Individual Freedom." To the crisis of confidence of the McCarthy era, Mr. O'Brien responded in those lectures that there was an urgent need for the leaders of America to "awaken to their obligation to protect the freedom of the human spirit." There can be no doubt that his own dedication to that task contributed in a major way to a return to sanity. The Godkin Lectures, later published in book form, won awards from the National Conference of Christians and Jews and from the Sidney Hillman Foundation.

The second of Mr. O'Brien's achievements in these latter days of his life was, in a sense, the culmination of a life as an active churchman, including many years as Chancellor of the Episcopal Diocese of Western New York. It was perhaps only natural that when in 1946 the President and Fellows of Harvard appointed a committee of distinguished theologians to recommend what should be done about the long-neglected Harvard Divinity School, Mr. O'Brien would be named as lay chairman. The committee, after a year and a half of study, concluded that the School should not be abolished, but should be revitalized and adequately endowed. Again, it was perhaps only natural that Mr. O'Brien would become the National Chairman of the Endowment, to raise the $5 million in private funds needed to carry out the committee's recommendations, and that he should successfully complete the task. His efforts over more than a decade on behalf of the Divinity School have been recognized by the establishment there of the John Lord O'Brien Chair of Divinity, designed, as its dedication reads, to
reflect his broad compassion, his constant search for truth in every
quarter, his insistence on the right of all men for a fair hearing for
their opinions.

Throughout his career, Mr. O’Brian consistently declined judicial offices. As
early as 1915, Governor Whitman urged him to accept an appointment to the
State Supreme Court, and shortly following World War I, Mr. O’Brian was
offered appointments by President Wilson to the Court of Claims, and to the
Supreme Court of the District of Columbia. Offers of appointment to the New
York Supreme Court were renewed in 1919, 1921 and 1925, and in 1920 to the
New York Court of Appeals. In 1931, he was offered the position of United
States District Judge in Buffalo. All were declined, as were proffered appoint­
ments to the Federal Trade Commission and to the Chairmanship of the National
Labor Relations Board when it was first created in 1936. Why the business of
deciding cases did not appeal to him, I do not know. Perhaps it appeared to
represent two much of a withdrawal from the arena of public affairs, where
plentiful opportunities for public service were more welcome alternatives.
Certainly, Mr. O’Brian would have been a great judge. He had to a superlative
degree not only the intellectual powers and the legal knowledge such a position
demands, but above all, the wisdom which makes for the greatest of judges. One
can truly say of him, as Judge Learned Hand said of Mr. Justice Cardozo, that he
“was wise because his spirit was uncontaminated, because he knew no violence,
or envy, or jealousy, or ill-will.”

I must add a personal note. John Lord O’Brien was a friend, and a partner,
for three decades. But to me he was much more—one of those rare men who can
truly be called great—in spirit as well as in achievement. One thought of him as
one thought of other great names in the law—men who were his intimate
friends—such as Holmes, Brandeis, Cardozo, Hughes, Learned Hand, Elihu Root,
Henry Stimson, Felix Frankfurter, and Robert Jackson. To paraphrase the
language of the award to him by the Fellows of the American Bar Association in
1960, he gave inspiration to all who shared membership in his profession, and
held before us the duties and joys of courageous and generous citizenship. The
many ways in which he served his country and mankind are overshadowed for
me by memories of the warmth, the humanity, of a truly great spirit. All who
came to know him, and they are legion, will miss his words of consolation for
our personal tragedies, and his words of praise for our occasional triumphs. He
lived for others, not for himself.

Mr. Justice Frankfurter, Mr. O’Brian’s friend for a half century, gives me
the words with which to close: “‘Let us now praise famous men,’” he said, “is
not a mere adjuration to lay verbal flowers on the graves of the departed. It is
for our sake that we are to praise them, for, as Ecclesiasticus added, ‘they have
given us an inheritance.’”
From left to right, John Lord O'Brian’s daughters, Mrs. Kellogg Mann, Mrs. Winfield L. Butsch, Mrs. S. Davis Boylston and Mrs. Thurston T. Robinson at the presentation of Mr. O'Brian’s portrait, painted by Ms. Virginia Cuthbert.

President of SUNY at Buffalo, Dr. Robert L. Ketter, addressing the Dedication Ceremony.

Charles A. Horsky, Esq., Mr. O’Brien’s former Law Partner, delivering the Dedicatory Address.
Honorable Malcolm Wilson, Governor of the State of New York, and Dr. Richard D. Schwartz, Provost of The Faculty of Law and Jurisprudence and Dean of the Law School.

From left to right, M. Robert Koren, Esq., and Joseph J. Runfold, Esq., President and Vice President of the Erie County Bar Association with The Honorable Dolores Denman, President of the Law School Alumni Association.
On the left, Wade I. Newhouse, Jr., Professor of Law and Chairman of the Building Committee, receiving an award from Associate Provost William R. Griener.

West end of John Lord O'Brian Hall.