

IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT

PROCEEDINGS ON THE OCCASION OF
THE INDUCTION OF
HONORABLE HENRY X. O'BRIEN
AS A JUSTICE OF THE SUPREME COURT
OF PENNSYLVANIA

Present: BELL, C. J., MUSMANNO, JONES, COHEN
and EAGEN, JJ.

The proceedings on the opening of the Supreme Court on Wednesday, January 3, 1962 were as follows:

MR. CHIEF JUSTICE BELL: We recognize the Honorable Elder W. Marshall.

HONORABLE ELDER W. MARSHALL: May it please your Honors: I have here an official document from the Governor of this Commonwealth which commissions HENRY X. O'BRIEN, a judge of this great Court, the Supreme Court of Pennsylvania. With your Honors' permission I shall read the commission.

(The Commission of HENRY X. O'BRIEN as a Judge of the Supreme Court, dated December 22, 1961, and signed by David L. Lawrence, Governor, and E. James Trimarchi, Jr., Secretary of the Commonwealth, with the great Seal of the State affixed, was then read.)

Now I should like to speak for a moment about Judge O'BRIEN. He is a native Pittsburgher, fifty-eight

years of age, and a graduate of Duquesne University and Duquesne University School of Law. His family consists of his wife, Rosemary, and two children, Henry X. O'Brien, Jr., and Mrs. Carolyn Staley. All are present on this occasion.

Judge O'BRIEN came to our bar in 1929. He practiced in Pittsburgh until 1947, the greater part of the time in association with and under the benign influence of Thomas M. Marshall, Jr., a leader in our profession. From 1942 to 1947 he was an assistant district attorney of Allegheny County.

In 1947 he was appointed a judge of the Court of Common Pleas of Allegheny County. Because of his reputation and personality, he was nominated by both political parties and was elected without further contest. Again, in 1959, after serving for twelve years, he had the same happy experience. Both parties chose him as their nominee, and again he was elected without a struggle.

Judge O'BRIEN had a very distinguished career in the more than fourteen years he sat on our Bench. He had the qualities of mind and heart which endeared him to the people. His good will toward his fellow men was altogether spontaneous. He listened to their problems and controversies patiently; and his decisions became notable because of his good judgment and sound common sense. In an article in the latest number of the American Bar Association Journal, a distinguished jurist recites ten commandments for any new judge. At the top of the list, he enjoins that the judge must have a kind and understanding heart and be extraordinarily patient. He quotes the Lord High Chancellor of Great Britain, as follows: "There is much to be said for the view that a kind and patient man who is not a profound lawyer will make a far better judge than an ill-tempered genius."

We who know him best predict that on this great tribunal with its glorious tradition—the oldest appellate court in America—Judge O'BRIEN will listen patiently and attentively, will withhold judgment until all parties have been heard, will decide wisely, and in his opinions will exhibit his great gift of clear expression.

MR. CHIEF JUSTICE BELL: We recognize Mr. Charles B. Jarrett.

CHARLES B. JARRETT, ESQUIRE: Mr. Chief Justice and Justices of the Supreme Court of Pennsylvania.

It is with pleasure that I appear before this court to represent the members of the Allegheny County Bar and their bar association and to participate in the proceedings of induction of HENRY X. O'BRIEN.

Judge O'BRIEN and I have been friends of long standing and have worked together as lawyers in our courts and have engaged in many campaigns which have culminated in the attainment of his lifelong ambition to become a member of the highest court of our Commonwealth.

Judge O'BRIEN possesses all of the natural qualities of a fine gentleman and of a patient, studious, courteous, industrious and impartial jurist. The lawyers of his home county through their many years of association with him as a general practitioner, a teacher of law at Duquesne University, an assistant district attorney and a judge have in many ways aided in the moulding of this esteemed representative of our profession. In this we take great pride.

The members of the courts, the Bar and all of the people of Allegheny County suffer a great loss with the departure of Judge O'BRIEN from our court of common pleas. It is your gain as a court and of all the people of the Commonwealth.

We commend him to you and we assure you that he will become a valuable asset to this Court and will win the affection and respect of each of you, as he has won ours.

We wish him God speed, happiness and success as a Justice of the Supreme Court of Pennsylvania.

MR. CHIEF JUSTICE BELL: The Court recognizes the honorable SAMUEL A. WEISS, Judge of the Fifth Judicial District.

JUDGE WEISS: Mr. Chief Justice BELL and Associate Justices of the Supreme Court:

I come today to present to this Court a life-long friend—a fellow alumnus of Duquesne University, and a beloved colleague of the Court of Common Pleas of Allegheny County for the past fourteen years. Our friendship and association reaches into the past some forty years and I believe that qualifies me as an expert on Henry. He was an able and conscientious lawyer whose integrity and honor earned for him an enviable reputation among the Bench and Bar of Allegheny County.

No wonder, his preceptor was Thomas M. Marshall, Jr., one of the most eminent members of the Bar of our Commonwealth, admitted to our Bar in 1861, and father of the late Judge THOMAS M. MARSHALL of our common pleas court. Judge O'BRIEN was a magnificent trial lawyer and displayed the traits and qualities that later earned for him an appointment to the district attorney's office of Allegheny County, and later an appointment by Governor James H. Duff to the court of common pleas of our County. After almost two years on the Bench, his record was crystal clear, and the people in the first primary campaign of his life time gave him both the Republican and Democrat nominations—and I might say, against the best

campaigner in the history of the Democrat Party of our county, the late Judge FRANCIS J. O'CONNOR. Judge O'BRIEN was interested in many community activities, president of Mercy Hospital, a teacher and professor at Duquesne University School of Law. His Alma Mater recognized his accomplishments, and on June 3, 1956, awarded him the degree of doctor of laws, one of only two such honorary degrees ever presented to its graduate alumni, and I am so fortunate to be the other.

I take the privilege of reading part of that citation :

"HENRY XAVIER O'BRIEN, distinguished jurist, unselfish public servant, fearless defender of decency, loyal alumnus,

"Your singular devotion to justice won for you early in your legal career the respect and trust of your fellow citizens who bestowed upon you the honors of public office.

"As Judge of the Court of Common Pleas, you earned an enviable reputation for patience and fairness in the exercise of that office. Your deep devotion to decency prompted you to labor zealously for the passage of more stringent laws in the interest of public morality, thereby earning you the gratitude of parents and educators.

"Your dedication to the common weal has caused you to give yourself unsparingly to many causes. You have served as President of Mercy Hospital; President of the Pittsburgh Branch of the Pennsylvania Association for the Blind; Member of the Executive Board of the Boy Scouts of America; Member of the Board of Directors of Roselia Foundling Hospital; and Member of the Board of Managers of Saint Paul's Orphanage.

"In the midst of your many and varied activities, you have not ceased to remember your Alma Mater,

but have served her well as a member of the faculty of Duquesne University School of Law and as an esteemed member of the President's Advisory Board."

Shortly after my election to the Bench 16 years ago, I saw a grave inadequacy in our laws dealing with dangerous and habitual sex offenders—and HENRY X. O'BRIEN as an assistant district attorney joined me and continued the fight as my colleague on the Bench for legislation, and we had prepared the Weiss-O'Brien Bill that later was sponsored by Senators Walker, now Commissioner, and Barr, now Mayor, and was later signed by Governor Fine, now known as the Walker-Barr Act, which gives the courts the power to impose a sentence of from one day to life to known habitual sex offenders.

Judge O'BRIEN is the personal embodiment of our American ideal of justice. You will find in his utterances and opinions no legal mumbo jumbo but a rich measure of the drama of litigated controversy, a comprehensive sweep of the human issues that underlie the jurist's art. He brought to our Bench a sensitive mind and an encyclopedic memory.

Judge O'BRIEN never sought political headlines, popular acclaim or public favor. He sought to serve—and this he did well.

The greatest encomium that could be heaped upon Judge O'BRIEN was the statement of a young lawyer who said to me last week: "He was so courteous and kind in court that I would rather lose in his court than win in others."

He has a kind and understanding heart, a cardinal virtue for any jurist, patience and he never shirked responsibility.

The Bench—"lower or appellate court"—is no place for a cruel and calloused individual regardless of his

other brilliant qualities and attributes. As a lawyer and as a judge, he has a keen interest, a power of perception and analysis, sound judgment, mature experience, a broad knowledge of the law, gained as a teacher and professor of the law, a very kindly and loveable temperament—that's something—for any Irishman—and above all the courage of his convictions. Aside from his legal attainments, the trait of character of Judge O'BRIEN that endeared him to his colleagues was his extraordinary ability and talent for getting along harmoniously with the entire Bench and Bar.

One trait you will soon learn about Judge O'BRIEN that is priceless. I have never in my 37 years of acquaintanceship heard him say a disparaging word about anyone—even in a political campaign.

Another great quality of Judge O'BRIEN was his fight for decency. I was a member of a committee over which he presided to keep lascivious and lewd and immoral publications off our news stands, and Judge O'BRIEN was highly successful.

Above all, Judge O'BRIEN is rich in spiritual qualities. He never retires but that he takes out his rosary and prayer book, and he prays and looks to the Master Judge for divine guidance—and only God knows—we judges need that guidance more than anybody else. We hold the property rights of individuals on "our scales of justice,"—more than that—we hold the very life of an individual in the palms of our hands, and prayer is the mental and spiritual security and encouragement intelligent judges need.

Present here today are members of his wonderful family. Muffy O'Brien Staley, who is married to Professor Staley, a nephew of Judge AUSTIN STALEY, United States Circuit Court of Appeals and this merger brought close together the O'Brien-Staley clan.

Henry X. O'Brien, Jr., a successful young college graduate and businessman, and Judge O'BRIEN's wife Rosemary Hager O'Brien, who deserves real tribute for her constant companionship and assistance given the Justice during his campaign.

That is why this distinguished Court is fortunate to have added as your colleague an outstanding student of the law, a college law professor, a splendid trial advocate, and a jurist who rendered over 14 years of distinguished service to the people of Allegheny County, and a real Christian gentleman of outstanding integrity and high moral and spiritual principles, who always sought to bring litigated controversy to a just conclusion.

That, my distinguished Mr. Chief Justice and Associate Justices, is your new colleage, Mr. Justice HENRY XAVIER O'BRIEN.

HONORABLE ELDER W. MARSHALL: And now, I present to this Court a distinguished nisi prius jurist, recently elected by the people of our Commonwealth to sit on this Bench in association with Your Honors. I move that the oath of office be administered to him and that he be inducted into office forthwith.

Chief Justice BELL administered the constitutional oath to Justice O'BRIEN.

Present at the induction ceremonies were former Chief Justice CHARLES ALVIN JONES and Judge LORAN L. LEWIS of the Fifth Judicial District and many other distinguished persons.