

Kenneth J. Krayeske

From: John Q. Barrett [barrettj@stjohns.edu]
Sent: Friday, February 12, 2010 8:25 AM
To: KJKrayeske@brownwelsh.com
Subject: FW: Jackson List: Jackson Against Segregation (1941)

From: John Q. Barrett
Sent: Thursday, November 12, 2009 4:10 PM
To: John Q. Barrett
Subject: Jackson List: Jackson Against Segregation (1941)

For the Jackson List:

From the 1873 until 1952, federal courts in the District of Columbia were housed in the District's Old City Hall building at 4th and D Streets, Northwest (an area that thus came to be called Judiciary Square). For much of that period, the District of Columbia Bar Association's library also was located in the courthouse. The library was open for use by all Bar Association members, a population that was limited well into the 20th century to white men. The Bar Association also refused to permit non-members to use the law library—the only law library in the federal courthouse—even as guests.

By statute, the D.C. Courthouse was operated and managed under the authority of the Attorney General of the United States. In 1938, a Negro attorney in Washington, Huver I. Brown, thus filed a federal lawsuit against Attorney General Frank Murphy and the Bar Association, alleging that their exclusion from the courthouse library of Brown and other lawyers violated their rights. U.S. Department of Justice attorneys successfully moved to have the case dismissed. While Brown pursued an appeal, the Department then sought to negotiate the Bar Association's agreement to permit non-member attorneys to use the library. In early 1941, however, the membership of the Bar Association voted continue its exclusionary policy.

Murphy's successor as Attorney General, Robert H. Jackson, exercising his statutory power as the "landlord" of the federal courthouse, then decided to end the exclusion. On February 12, 1941 (the 132nd anniversary, of course, of Abraham Lincoln's birth), Attorney General Jackson announced that the Department of Justice no longer would defend the *Brown* lawsuit. Jackson also ordered that by April 1st the Bar Association must cease to discriminate in federal courthouse facilities against any D.C. Bar member on the basis of "race, color, religion, or sex."

The text of Attorney General Jackson's letter informing the president of the Bar Association of this order is at the bottom of this note.

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Tomorrow morning, I will be giving a lecture, "Robert H. Jackson Against Segregation: The Attorney General and the District of Columbia Courthouse Library," that will cover aspects of this saga. My lecture will be part of a two-day symposium on "Modern Adaptations of Racial, Social, and Economic Justice," hosted by the Ronald H. Brown Center for Civil Rights & Economic Development at St. John's

University School of Law in New York City in the year that marks the 40th anniversary of Ron Brown's graduation from St. John's. The symposium is open to the public. For the full program, [click here](#). To register, [click here](#). For live streaming video tomorrow and Saturday, [click here](#).

Essays and articles based on the symposium lectures will be published next year in the JOURNAL OF CIVIL RIGHTS & ECONOMIC DEVELOPMENT.

Please forward this note to others who might be interested. I also would welcome comments and assistance from anyone who has information about this topic.

With thanks,

Professor John Q. Barrett
St. John's University School of Law
[Homepage](#)

Elizabeth S. Lenna Fellow
[Robert H. Jackson Center, Inc., Jamestown, NY](#)

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Administrative details: I send Jackson List notes, which do not display recipient identities or email addresses, to readers who are interested in Justice Robert H. Jackson, the Supreme Court, Nuremberg and related topics. To read archived copies of some past Jackson List posts, [click here](#). If you received this note indirectly and wish to join the Jackson List, send a "subscribe" note to barrettj@stjohns.edu. If you wish to leave the Jackson List, just send an "unsubscribe" note.

* * *

February 12, 1941

Honorable Francis B. Hill
President, The Bar Association of the District of Columbia
1331 G Street, N. W.
Washington, D. C.

Dear Mr. Hill:

As you know, the case of Huber [sic] I. Brown v. The Bar Association of the District of Columbia, Inc. has been pending a long time. Mr. Brown, a member of the bar ineligible to membership in your Association because he is colored, complains that certain rooms in the District Court Building over which the Attorney General has supervision and control have been made available for library purposes to your association, which has, however, excluded members of the bar in good standing from use of the library on grounds incompatible with the prescriptions against discrimination contained in the Constitution. Inasmuch as the responsibility for the District Court Building is by law placed upon me, it was proposed to substitute me as a party defendant. I declined to become a personal defendant because technical defenses to Mr. Brown's complaint, whether good in law or not, do not justify me in perpetuating a denial of equal privileges in a Federal Court Building on grounds of race, of color, of religion, or of sex.

Assured by your officers of a desire to correct this situation and recognizing that an equitable provision for support of the library as between members of your Association and non-members presented some difficulty, I asked [Claims Division] Assistant Attorney General [Francis M.] Shea to attempt to mediate between your association and those who felt the sting of discrimination in an effort to settle the differences. A program was reached which was satisfactory to your committee, which voted unanimously to recommend it to your Association, and I am informed that your Board of Directors voted unanimously to recommend it to your Association. The program was also satisfactory to the complainants and was, therefore, acceptable to me. Upon being submitted to a vote of the membership of your Association, however, the proposal was finally turned down.

It is now apparent that further efforts by this Department at mediation are futile. I shall not defend either on technical or other grounds the discrimination which has been practiced in the use of the facilities of the Federal Court Building. It is due to you and to the Directors of the Association and to the Judges of the District Court and the committee specially appointed to deal with this matter that I should acknowledge that all of you have been most cooperative in this matter and your attitude commendable. The failure of negotiations is due to no fault of yours.

I am issuing an order that on and after April 1 if any space in the Federal Court Building be occupied by any members of the bar or by any association of the bar, the space and its facilities shall be made available to all members of the bar in good standing without discrimination on account of race, color, religion, or sex.

Sincerely yours,

/s/ Robert H. Jackson

Attorney General