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The Justinian

Brooklyn Law School St. Lawrence University



VOLUME VII, No. 4

BROOKLYN, N. Y., FRIDAY, FEBRUARY 4, 1938

By Subscription

Name Chairmen For 36th Annual Alumni Dinner

Justice Dunne Lauds Alumni For Wholehearted Response To Dinner Plans

CHANGE DATE TO MAY 21

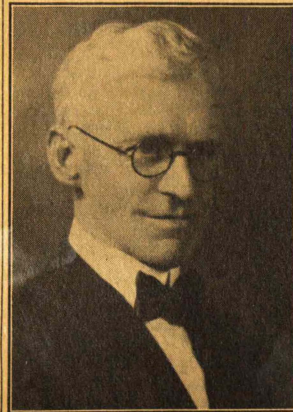
Joseph Katz, '21, Announces Plans For Dinner Are Approaching Final Stage

Arrangements for the 36th annual alumni dinner which will be given in the grand ballroom of the Waldorf-Astoria, Manhattan, on Saturday, May 21, are gradually being whipped into shape, Joseph Katz, '21, chairman of the dinner committee has announced.

The program of entertainment will follow the style set at the affair of two years ago, and repeated last year, which satirized and burlesqued various prominent personalities in a number of hilarious skits. Dean Richardson was the central figure in one of these skits, while others good-naturedly lampooned Mayor Fiorello H. LaGuardia, the Supreme Court of the United States, President Roosevelt and others.

Script by Shiebler, '29, arrangements have been made to Howard A. Shiebler, '29, write

Prof. Coyne, 59, Dies Suddenly



Taught Federal Practice in Graduate School for Many Years

Bartholomew B. Coyne, prominent New York attorney and for many years professor of federal practice in the Brooklyn Law School, died suddenly of a heart attack at his home in Maplewood, New Jersey, on January 6, 1938. He had practiced law in New York since 1902.

Mr. Coyne, who was 59 years old, had apparently been in good health

140 Graduates Pass October State Bar Exam

49 Residents of First Department Pass Exam; 88 From Second Department

One hundred and forty graduates of the Brooklyn Law School passed the October bar examination, according to a list recently released by the State Board of Law Examiners. Of these 49 were from the First Department, 88 were from the Second Department, two were from the Third Department and one from the Fourth Department.

First Department

Fanny K. Bell, Irving Bernstein, Elias Blaustein, Benjamin Brown, Murry P. Davis, Paul Falk, Arthur Fastenberg, Bernard R. Feuerstein, Anthony T. Germano, Renato Giallorenzi, Rudolph J. Glantz, Muriel R. Goldberg, Abraham D. Goldsmith, Abraham Greenberg, Jack Guberman, Theodore E. Kahn, James J. Keenan, Harry W. Kirwin, Bernard Kogon, Louis Kramer, Bernard B. Leibowitz, Harold Levinson, William H. Loguen, Joseph H. Loveman, Harold X. McGowan, Monroe M. Meadow, David Mindlin, Max D. Novack, Henry L. Nowve, Edward Perlstein, Martin Popper, Barnett Rubin, Abraham H. Saul, Edith Schechter, Mortimer Scheffler, Alex Schmookler, Irving

Prominent Jurists To Sit At Practice Court Trials

Justices Algeron I. Nova and Meier Steinbrink Among Those Who Will Preside At Trial Sessions Next Month

The Brooklyn Law School Practice Court, with a variety of more than 150 cases, has begun its 16th year with a series of preliminary hearings and arraignments, it was announced recently by Professor Edwin Welling Cady, director of the Practice Court. Actual trials will get under way in March.

Dr. Cady announced that Supreme Court Justices Meier Steinbrink and Algeron I. Nova, and Henry Uterhart, prominent New York attorney, will preside at several of the practice court trials.

Justice Steinbrink will sit at trials held on March 5, at both the morning and afternoon sessions. Mr. Uterhart will preside at the afternoon session of the same day. Justice Nova will sit at the afternoon session on March 12.

Senior students have been assigned fictitious cases involving physicians who split fees, lottery cases against movie theatres for "bank nights," cases involving laymen who conduct hospitals, cases where brokers acted for both parties in the same deal and murder trials containing facts complicated enough

Appointed by Dewey



NATHANIEL KAPLAN, '30

Dewey Appoints Three Alumni

Corporation Counsel Chanler Also Appoints Alumni

More Than 700 Attend Formal At Hotel Plaza

President Seelye of St. Lawrence University Among Those Present

GREET'S VICE DEAN

Vice Dean Hagendorn Acts As Host; Assisted By Officers Of Student Council

More than 700 students, faculty members and their guests were present at what was said to be one of the best attended and gayest annual promenades of the Brooklyn Law School last Saturday night in the grand ballroom of the Hotel Plaza, Manhattan.

President Laurens Hickok Seelye of St. Lawrence University brought the greetings of the University and congratulated Vice Dean William V. Hagendorn, who acted as host, on the numbers who attended and the spirit of the occasion.

Pictures taken by THE JUSTINIAN at the promenade will be found on page 3.

President Seelye joined Vice Dean Hagendorn and John J. Ferril, president of the Student Council, in welcoming couples as they entered the ballroom. Other members of the

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PROFESSOR COYNE

Professor Bartholomew B. Coyne died suddenly in his 59th year on January 6, and it was with a profound sense of personal loss that members of the faculty and students of the Brooklyn Law School learned of his passing.

To Professor Coyne the law was more than a profession, it was a way of life. He had always felt that a lawyer was a servant of the community, and his career was dedicated to that philosophy.

Professor Coyne was a great educator. Those whose special privilege it was to attend his classes felt the inspiration radiated by his scholarly knowledge of the law and by his vital enthusiasm. Professor Coyne was a member of the faculty for seventeen years. He inspired students to think that the law was concerned not solely with text and case, but with the broader implications of justice and fairness.

Professor Coyne's death is mourned by all who knew him—by his colleagues on the faculty, his students, members of the bench and bar, by those numerous friends to whom he gave sage counsel and advice.

PRACTICE COURT

BOOK REVIEW

FOLKLORE OF CAPITALISM. By Thurman W. Arnold. Yale Press, 1937. Pp. 328. Index.

Legal realism, a comparatively recent voice in juristic thought, has found its expression in the apparent inability of many lawyers to reconcile legal principles and precedents with the challenges of pressing social problems. Those of the profession who demand greater and greater emphasis on the social consequences of the law and its enforcement in theory and practice number highly in the legal brain trust of the New Deal administrative departments and on the law faculties of Columbia and Yale. Their writings have become increasingly voluminous. And their influence on the law, to quote what appears to be the consensus of opinion among referents for "right thinking" and "stability," is a dangerous tinkering with and undermining of the legal structure in "a determined drive to revolutionize the legal order, a sustained assault upon the citadels of the common law. . . ."

Thurman W. Arnold is a legal realist. Experienced as a practical politician, as a government trial counsel, and as an incumbent professor in the Yale Law School, he has subscribed to the functional approach in the law.

In "Folklore of Capitalism" he has not written a legal treatise. Rather, he has started where the other legal realists have left off, and has given us the first literary attempt at the long-heralded necessity of correlating the law with the symbols of other social controls. More accurately this is his second attempt—for his first book, "The Symbols of Government," published two years ago, was a biting attack on the unswerving reverence afforded by society to conventional principles of good and bad.

In the present volume, Professor Arnold continues his diatribe against conventionalism. He has undertaken to explode the myths of traditional prerogatives not only in the law but in economics, government, anthropology, psychology, sociology and history. To Mr. Arnold this assault implies the contention that abstract truths above what is actually happening in social life is meaningless. His thesis is that we do, unfortunately, put principles above tangible action, that we prefer to suffer under principles of categorical imperative, that we substantiate the validity of these principles by reference to these principles alone, and that by ipso facto giving these principles lasting authority and preeminence we resolve the problems of social living through a system of circular thinking.

In other words, our social actions rely for their rationale on foundations of unproved but revered doctrines; such a circumstance smacks of mysticism and magic. In our own field, for example, the law is a branch of astrology and the Supreme Court is an exhibit in totem worship. Such a thesis can find credence only in the most advanced and still unaccepted anthropological circles. For, then, society is neither the result of a social contract, nor of social evolution.

Show Cause Orders

The validity of service on an attorney of orders to show cause to punish for contempt, rather than upon the individual himself, is discussed in an article published in the New York Law Journal of Nov. 10 and 12 by Mr. George K. Rosenberg, '36.

Mr. Rosenberg attributes the difficulty of the problem to the interpretation of the controlling statutes, pointing to Rule 20 of the present Rules of Civil Practice which provides:

"A notice or other paper in an action (other than a summons or other process, a paper to bring a party into contempt, or where the mode of service is specially prescribed by law) may be served on a party or an attorney either by delivering it to him personally or in the manner following."

Mr. Rosenberg says that under this section a paper to bring a party into contempt may not be served on an attorney.

The difficulty, he points out, arises in determining what is a "paper" bringing a party into contempt, and whether an order to show cause is such a paper. Mr. Rosenberg quotes Section 761 of the Judiciary Law which defines an order to show cause as follows:

"An order to show cause is equivalent to a notice of motion, and the subsequent proceedings thereupon are taken in the action or special proceeding, as upon a motion made therein."

A show cause order, Mr. Rosenberg writes, "being the 'equivalent' to a notice of motion" need not be served upon the individual personally, but may properly be served upon the attorney in the action or special proceeding, as in the case with notices of motion generally, provided it does not fall within the exception of Rule 20 as being a paper to bring a party into contempt.

Defines Order

"An order to show cause is not a paper bringing a party into contempt, but is an order bringing him into

Current Legal Decisions

By Arthur Lerner

Executors and administrators — appointment of executor—prior conviction of felony as disqualification—*Matter of Cohen*, 164 Misc. 98, 298 N. Y. Supp. 368 (1937) (Surr. Ct., Kings Cty.).

Application for letters testamentary. The testator named as his executors his three fine young sons, Morris, Isidore and Hyman. Morris had been convicted, in a New York court, of forgery in the first degree; Hyman, alias Herman, had been convicted in a Federal court, for perjury; and Isidore had been convicted in a New York court, for petit larceny, and, at the time of this decision, was awaiting trial for perjury.

Under the Surrogate's Court Act, a felon is incompetent to be an executor. In the instant case, the three hopeful would-be fiduciaries appear to be somewhat lacking in that certain "something stricter than the morals of the market place" so panegyricized in *Meinhard v. Salmon*, 249 N. Y. 458, 464.

A felon is a person convicted of a crime which is or may be punishable "by death or imprisonment in a State prison." Hence, it is apparent that Morris is absolutely incompetent to be executor. Brother Isidore, on the other hand, is attacked, not only as a felon, but as a "dishonest person." Yet one isolated act of wrongdoing is insufficient to show a "habit of mind" toward wrongful action. Considering, though, that he is on trial for a felony, it is better to await the outcome of that trial before appointing him than to appoint him now and remove him if he is convicted.

The right to name an executor is of common law origin, and any statutory derogation therefrom must be strictly construed. The definition of a felon refers to a "State" prison, thus excluding Federal offenses. In

the commission of the crime. This testimony was admitted over objection of defendant's attorney.

Held, reversed.

1. An alienist called to testify is limited to opinion based upon proper hypothetical questions and opinion based upon personal examination of defendant. Opinions based in whole or in part upon statements other than those in question are not admissible. It may be said:—"The witness was an expert on the diseases of the mind, but he was not an expert on determining the facts, where such facts had to be attained from the statements of others." *People v. Strait*, 148 N. Y. 566, 570.

2. In the instant case the error was not cured, though both the mother and sister testified at the trial, as they did not testify regarding the statements they made to the expert, nor was defendant's counsel permitted to cross-examine the expert regarding the nature of the statements upon which his opinion was based.

Workmen's compensation — injuries arising out of and in the course of employment—*Matter of Holst v. New York Stock Exchange*, 252 App. Div. 233 (1937) (Appellate Division, 3d Dep't).

Claimant, a page in defendant's employ, was injured while playing on a soccer team maintained by defendant. The game was played after the exchange had closed for trading. Defendant handles all the finances of its employees' teams and the employees are given time off for games and practice.

Held, award for medical services, made by the State Industrial Board, affirmed.

1. Corporate officials may not distribute largess with the stockholder's money.

Choose Jurors With Caution, Says Liebowitz

More than 600 lawyers and law students filled the auditorium of the Brooklyn Law School recently to hear Samuel Liebowitz, noted criminal lawyer speak on trial tactics in criminal prosecutions. The talk was held under the auspices of the Committee on Junior Membership of the Brooklyn Bar Association.

One of the most important elements in a criminal case is selecting the jury, Mr. Liebowitz said. "A lawyer," he pointed out, "is a salesman of ideas and thoughts. It is important that his customers, who are the jurors, have as little sales resistance as possible. If one or two of the customers have stiff sales resistance, that makes the lawyer's task so much the more difficult.

"All the lawyer wants is a jury that will listen to a sales talk fairly," Mr. Liebowitz declared.

Mr. Liebowitz told the audience that a jury composed of younger men and old women is the best possible jury an attorney for the defense in a criminal prosecution can hope for. These are the people who have the least sales resistance, and who will listen to a lawyer.

Among the prospective jurors he always rejects, he said, are the bull-necked, blue-eyed business executive type. "They can't understand the frailties of human nature," he explained.

Mr. Liebowitz, who claims to have saved 125 defendants from the electric chair over a span of 20 years, warned his listeners that it is attention to details that wins criminal cases.

140 Graduates Pass October State Bar Exam

Serves As Acting U. S. Attorney

Harold St. L. O'Dougherty, Former Chief Assistant, Named to Head Eastern District at Death of U. S. Attorney Hickey

Harold St. L. O'Dougherty, '16, has been appointed acting United States Attorney for the Eastern District to succeed Leo J. Hickey, who died recently. Numerous civic, fraternal and legal associations are actively urging that his appointment be made permanent.

For three and a half years Mr. O'Dougherty served under the late United States Attorney as his chief assistant and head of the criminal division. Upon Mr. Hickey's death, the Federal judges of the Eastern District, which comprises Kings, Queens, Nassau, Suffolk, and Richmond counties, appointed him acting U. S. Attorney to serve until a successor is appointed by the President. The oath of office was administered to him by senior Federal Judge Marcus Campbell in the Brooklyn Federal Building.

On taking over the position of criminal division chief, Mr. O'Dougherty began a relentless war against narcotic peddlers and smugglers. Numerous illicit alcohol stills which were operated in the district were also the objects of attack by Mr. O'Dougherty.

Because of the thoroughness with which cases were prepared and evidence handled, convictions were numerous and Mr. O'Dougherty was complimented many times by the judges in the district for his work. He has the confidence of those who work with him, and they join the great number of people who are hoping that his appointment will be made permanent.

Born In Brooklyn

Born 43 years ago in Brooklyn, the son of Daniel M. and Julia T. O'Dougherty, the acting U. S. Attorney

attended elementary and high school in Brooklyn and received his Bachelor of Laws degree from the Brooklyn Law School in 1916. The following year he was admitted to the bar.

At the start of the World War Mr. O'Dougherty joined the Naval Reserve. After completing his mil-

itary service, he began the practice of the law, sharing offices with the late Mr. Hickey. This association continued for 18 years and when Mr. Hickey was appointed United States Attorney in 1934, it was at his insistent request that Mr. O'Dougherty accepted appointment as Chief Assistant United States Attorney, his first public office.

Mr. O'Dougherty's outside activities are many. He is a member of Old Glory Naval Post No. 48, American Legion; Brooklyn Bar Association; Delta Theta Phi fraternity; National Legal Fraternity; the Brooklyn Law School Alumni Association; the Society of Old Brooklynites; Lawyers Club of Brooklyn;

Acting
United
States
Attorney
Harold
St. L.
O'Dougherty, '16



Catholic Lawyer's Guild of Brooklyn; Emerald Association; Saint Patrick Society of Brooklyn; Boy's Club, Navy Yard District; Anvil Chorus; Grandview Gardens Community Club; Columbus Club; and the Flatbush Democratic Club.

He is married and lives with his wife and two sons at 47 St. Paul's Place, Brooklyn.

Announce Class Chairmen For Annual Alumni Dinner

(Continued from Page 1)

The cost of tickets is six dollars per person.

Prominent members of the bench and bar have always been attracted to the alumni dinner. Many of the school's distinguished alumni have already indicated that they will be present, and have offered their services to help make the dinner a success.

Mr. Katz announced that the entertainment and dinner will be started a bit earlier than in the past, in order to leave more time for dancing. In past years alumni, young and old, have consistently asked for more dance time.

The first alumni dinner took place just 36 years ago, when 15 men gathered around a table at the Hotel Clarendon, then one of Brooklyn's most famous hostels and which has since been torn down. Hon. Harrison C. Gloré and Henry Weissman, president and secretary respectively of the class of 1903, were the motivating spirits of this gathering.

Of the 15 graduates present that night at the Hotel Clarendon, many have since held high administrative and judicial offices, and others have served as members of legislative bodies in New York State and other States.

Since that time the annual dinners have grown to such an extent that it has become necessary to hire larger and larger quarters as the years go by, in order to accommodate the increasingly great number of alumni and their guests who regularly attend.

Last year the affair was so satisfactorily staged in the Waldorf-Astoria that, immediately following it, Justice Dunne arranged to rehire the hotel for 1938.

Dinner committees for the various alumni classes are being organized, and Justice Dunne has issued the following statement:

"Through my constant contact with graduates of the Brooklyn Law School, I have known for a great many years of their loyalty to their

Alumni Association to assume the responsibility of acting as class chairmen to insure the success of this year's dinner. I want to use the medium of the school paper to express my sincere appreciation for their faithful co-operation. The Chairman of each class has been authorized to select his own class committee and the reports thus far made to me by Joseph Katz, the Chairman of the dinner committee, indicate the same gratifying enthusiasm. I look forward to an attendance that will break all former records."

Chairmen of class committees for the alumni dinner are:

1902

Manasseh Miller, c/o The Prudential Savings Bank, Broadway and Vernon Ave., Brooklyn, N. Y.

1903

Hon. Harrison C. Gloré, City Court of the City of New York, Central Court Building, Brooklyn, N. Y.

1904

Charles H. McCarty, 32 Broadway, New York.

1905

Hon. Fred G. Milligan, 375 Fulton Street, Brooklyn, N. Y.

1906

Dr. Edwin W. Cady, 375 Pearl Street, Brooklyn, N. Y.

1907

Hon. Rose Gottlieb, 16 Court St., Brooklyn, N. Y.

1908

Benjamin C. Ribman, 170 Broadway, New York.

1909

Harry A. Redmond, 1 Wall Street, New York.

1910

Hon. Edgar F. Hazleton, 155-31 Jamaica Ave., Jamaica, N. Y.

1911

Martin H. Weyrauch, 375 Pearl Street, Brooklyn, N. Y.

1912

Saul J. Cutler, 50 Court Street, Brooklyn, N. Y.

1913

Felix C. Benvenia, 137 Centre St. New York.

Former Faculty

Bankruptcy Expert

Alumni Honor

More Than 700 Attend Formal At Hotel Plaza

(Continued from Page 1)

That the affair did come as a welcome respite was proved beyond a doubt. Law and collateral matters were not, for the most part, topics of conversation; but there were those more ambitious students who made sporadic sorties upon the professors in attempts to discover what marks had been given to them for the courses recently concluded. From all reports, not a faculty member weakened, and divulged his secrets.

Dancing styles were less conservative last Saturday night than in previous years, with students responding to current fashions by "shagging," "trucking," etc. The "Big Apple" also came in for attention on the dance floor.

Professor Block was the subject of a petition issued and signed by women students, who complained that the "handsome" professor concentrated his attention wholly on his guest and asked no one else for a dance. The petitioners, who sought to bring Professor Block out of his sheltered existence into their midst, made use of Joe Haymes, orchestra leader, who was induced to read the petition from his platform.

The affair was under the supervision of the Student Council, whose officers are Mr. Ferril, president; William Orris, vice president; Martin Rubin, treasurer; and Edwin Rosenfeld, secretary.

Dean Elected Brooklyn Bar Group Trustee

Dean William Payson Richardson and John J. Curtin, '06, have been elected trustees of the Brooklyn Bar Association. The Dean has long

Students, Faculty Lay Aside Legal Problems at Annual Prom



Law Club Hears Steuer Discuss Trial Conduct

Addresses City College Club In Richardson Hall Auditorium

Max D. Steuer, eminent trial attorney, addressed an open meeting of the City College Club of the Brooklyn Law School, in the auditorium of Richardson Hall recently. Mr. Steuer's subject was "The Conduct of a Trial."

Outlining the entire procedure of an action from the choice of jurors to the finding, Mr. Steuer advanced several suggestions which he felt would prove helpful to a young attorney entering upon the practice of the law. Much stress was given to the importance of good taste in dress and appearance. The speaker advised that an undue display of wealth or a slovenly appearance, are damaging factors to one's client.

He held that the selection of a jury is as important as any other phase in a trial. It is essential, he said, that careful study be given to the nature of the action, and the relief demanded, and to choose jurors who may reasonably be expected to sympathize with the aims of the litigant.

The opening to the jury, Mr. Steuer said, is nothing more than a "promise to prove," and should be as brief as possible. Its only purpose is to give the jury an idea of the essential facts, so that they may be able to fit the testimony which is to follow in its proper place. The opening should be no more than a skeletonized review of the facts, and should be as simple as possible, so that the jury will not be confused.

Stresses Courtesy

Courtesy and respect, advised Mr. Steuer, are admirable qualities in an attorney. However, he said, "There is no price that ever compensates for a surrender of your own self-respect." An insult to self-