PRESIDENT SPEAKS
By LES HARTLEY
President, Board of Bar Governors

Several times this year, your Board of Bar Governors has been confronted with various aspects of the nature of the relationship between the permanent student organizations and programs.

In the past, the presidents of the legal fraternities and the St. Thomas More Law Society have been non-voting members of the Board of Bar Governors. On the other hand, programs such as Scott Competition, Mock Trial, Law Day, First Year Orientation and other bar functions have been conducted by elected representatives who were members of the board.

Presumably, the reason for this delineation was the assumption that the latter activities were a basic part of the function of the board; whereas the former group of organizational presidents represented separate entities whose programs sufficiently concerned the student body but did not have voting status because they were not elected to serve on the board.

Prior to the beginning of the fall semester there was no apparent indication that this relationship should be modified. Three separate elements, however, have created a set of circumstances which seek to serve as a basis for departure from the previous pattern.

One element was the pleasantly surprising growth of the Loyola Digest into a major student publication. As a consequence of this development, the Board of Bar Governors amended the Bar Association by-laws to provide that the editor shall be chosen by the newspaper staff and subject to faculty and administrative approval on an academic basis.

Since the president of the Student Bar is also on the staff, this provides for a measure of student approval as well.

Next was the factor that two of the three representatives on the board from Third Year Day were also on this year's Moot Court team. Because the Student Bar has traditionally organized the Second Competition, the consensus of opinion was to the effect that this activity should best be undertaken by an individual who did not have competing demands which would thereby attempt to alleviate this responsibility from members of the Moot Court team.

Unfortunately, this arrangement...

E D I T O R I A L

More than 11 years ago, a man was arrested, tried and convicted of 17 felonies consisting of first degree robbery, grand theft of automobile, kidnapping for purpose of robbery with infliction of bodily harm, violation of Section 288a of the Penal Code, attempted rape and kidnapping for the purpose of robbery.

For these crimes Caryl Chessman was sentenced to death.

Over a decade has passed since that sentence was passed, and because of the desire of the Courts to do justice and the questionable acts of Governor Pat Brown, Chessman lives.

Whether or not Chessman will ever walk into the gas chamber is a debatable question. Chessman's argument of "cruel and unusual punishment" was found by the Courts to be without foundation only a few weeks ago. Now, with new facts to support him, Chessman may appeal to the Courts on the ground that his treatment at the hands of the State of California has NOW become "cruel and unusual."

To the laymen, Chessman has become a symbol of what a shrewd man with money and attorneys can do in the way of obstructing justice. But the Courts will again hear his next appeal and remain blindfolded to public clamor, pro and con.

Indeed, justice might well decide that Brown's 11th hour action does constitute "cruel and unusual punishment," particularly when apparently sponsored by mixed motives. But regardless of Governor Brown's motives, his act in granting reprieve to Chessman appears to be without solid foundation.

The power of reprieve is not to be taken lightly. It should never be granted or denied solely because of public pressure. One can sympathize with Governor Brown as to his personal feelings regarding capital punishment. Nevertheless his own attitude on such an important issue should not control his power as the Chief Executive of the State of California.

The possibility of transferring the power of reprieve from the...
A new and interesting interpretation of California law regarding defaulting vendees was handed down by the District Court of the United States and approved by the United States Court of Appeals for the Second Circuit in the case of Ward v. Union Bond & Trust Co., 243 F.2d 476.

It in effect allowed a wilful, defaulting purchaser specific performance of the contract between the purchaser and the vendor. Before this decision can be evaluated, it is necessary to trace the history of the equitable remedies allowed to a defaulting purchaser in California so as to put this decision in its proper place in the evolution of the law on this subject.

The law in California regarding vendor-vendee rights under forfeiture and restitution provisions was in a state of uncertainty from 1890 to 1951. The old, general rule provided that a wilfully defaulting purchaser of land could not recover his down payment and interest in that amount notwithstanding the fact that the contract had been abandoned by the vendor, or mutually rescinded. (Phelps v. Brown, 95 C. 572.)

Glock v. Howard & Wilson Colony Co., 123 C 1, followed this rule. The court in that decision declared that a wilfully defaulting purchaser could get no remedy in equity, on the theory that one should not be allowed to go into Equity and show an equitable excuse if he could show an equitable excuse and if he could compensate the vendor for any loss suffered.

There was no change from this position until 1949, when the court decided the case of Barkis v. Scott, 34 C 2nd 116. In that case, relief was granted to a defaulting vendee upon showing an equitable excuse; the vendee also compensated the vendor for his loss due to the breach. This relief, in the form of specific performance based upon CC 3275, still presupposed that the vendee was not wilful in his breach. The majority in this case distinguished the Glock Case on its facts, pointing out that this was an innocent breach.

As can be seen by the Barkis decision, a relaxation of the original rule had started, and this relaxation continued on through the cases that followed. In Baffa v. Johnson, 35 C 2nd 36 (1950), a wilfully defaulting vendee brought suit for restitution on the ground that the vendee damages should be limited to his loss of profit. Plaintiff further contended that a denial of relief would work a forfeiture against plaintiff, and Equity should relieve against a forfeiture under CC 3369. The court expressed some doubt as to the validity of this argument, and denied recovery. It is submitted, however, that the plaintiff was unable to prove a forfeiture in this case.

However, in Freedman v. The Rector, 37 C 2nd 16 (1951), the plaintiff was granted restitution in a similar situation because he could prove a forfeiture over and above the damages suffered by the vendee. The court felt that to allow the vendor to retain all the payments, would, in effect, give him punitive damages, and this would not coincide with the established principles of Equity.

It would appear that this case impliedly overrules the Glock Case, and also does away with the doubt expressed in the Baffa Case. The court in the Freedman Case said that the sections of the Civil Code dealing with damages do not provide for punitive damages in contract actions even though the breach is wilful, and, a denial of restitution under these circumstances would, in effect, result in punitive damages. Thus, after this case, it appears that the law is quite clear regarding this subject: A wilful, defaulting purchaser could not get specific performance, but he could get restitution upon proving that a denial of it would result in punitive damages.

The law regarding defaulting purchasers was jolted out of this rational state in 1954 in the case of Ward v. Union Bond & Trust Co. Case. In this case, the wilfully defaulting purchaser was granted specific performance if he paid the entire purchase price plus the vendor's damages within 60 days. This United States Court of Appeals decision, construing CC 3369, is an extreme departure from the existing law, and it is this writer's opinion that it cannot be supported in the light of the cases discussed previously.

In the Freedman Case the court allowed restitution because they felt that Equity should protect even a wilful defaulter from forfeitures or punitive damages. This decision also expressed the view that to allow the vendor to keep all the payments would unjustly enrich him. In the Union Bond & Trust Co. Case, the court allowed specific performance to a wilful defaulter because restitution was not available due to the difficulty in proving the vendor's damages. Upon analysis, it seems that this shifts the burden of proving no unjust enrichment to the vendor. This is directly in conflict with California law which permits the vendor to prove unjust enrichment of the vendor as part of his case for restitution. (Bird v. Kenworthy, 43 C 2nd 656, 1954).

Some support may be found for the Union Bond Co. Case, in that the vendor did not suffer any monetary loss under the contract, while to enforce a forfeiture would subject the vendee to a considerable loss. However, it is submitted that if this rule is followed, ultimate restitution may buy a piece of property, wait to see if it goes up or down in value, and then sue for either restitution if it goes down, or specific performance if it goes up. During this time the vendor will not have been paid. Looking at this inequitable result, it is submitted that this is not the rule in California today, and this rule will not be adopted in the future.

PRESIDENT SPEAKS

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ment did not succeed as the person originally selected did not return to school at the beginning of the fall semester. Dick Smith, Student Bar vice-president, undertook the organization of the preliminary round of the Scott Competition after a resolution of the matter was referred to the Board of Bar Governors.

Subsequently, the board adopted a motion creating a permanent group to conduct the Scott Competition with a representative from each non-voting group on the board.

The third element is the feeling among various members of the board that non-voting status in any context is of questionable value. This contention is based on (1) the occasional presence of non-voting members at board meetings; (2) the feeling that non-voting status endorses apathy, while voting status encourages participation; and (3) the potential danger which may result from a lack of co-ordination with the non-voting activities conducted by the bar association on one hand, and the other student organizations.

"Necessity has no law; I know oyster without a knife, as well as the per-
**Blackstone's Commentaries**

The old order changeth, yielding place to new,—or some such phenomenon arrested the attention of passers-by, as the "Loyola Towers" were razed to the level of Twelfth and Grand. As a replacement for this architectural gem of an older day, the latest in parking facilities is now installed to provide suitable space for the varied need of motorized conveyances, foreign and domestic, that facilitate the movements of the purveyors of the case method and insure their being where the schedule declares they ought to be and when... So far for the immediate use of the area... And reasonably soon, it could well be the site of a permanent edifice to accommodate the socially-attuned youth who are daily beseeching its present portals... But more about this anon... In the meantime the products of the old walls,—cribbed, cabined and confined though they are and continue to be,—cease not to be in the vanguard of the professional parade, as they fulfill their responsibilities to court, to client, and to conscience... like **LYNN "BUCK" COMPTON**, who has been performing valiantly in Long Beach on the staff of the District Attorney... a high tribute to his competence is his selection by the Attorney General to assist in the prosecution of a particularly difficult murder case in Sierra County... the locale of this trial, Downieville, recalls a name associated with the School since its inception... Here the eminent lawyer, professor, and jurist, William Aggeler, stated his earthly pilgrimage in 1896 and brought it to rich fulfillment in our pueblo some seventy years later, leaving behind a trail of accomplishments that pledge a permanent glow to his memory... The "Aggeler Plaque" for "superior scholarship and noteworthy achievement" and "Aggeler Inn" are local reminders of the esteem in which he is held and, of course, there's the portrait beaming down from the first landing, and greeting with understanding sympathy eager youth courting in quest of the "reasonable man." "Buck" should really pick up some ammunition operating in an atmosphere redolent of such nobility... Down Long Beach way, "Hall and Farewell," is the order of the day as the High Command of its Bar Association changes... **TOM MCCARRY** directed its destinities during the past year with the skill and efficiency long associated with his ability to get things done... In this regard, a heavy dash of humor was an important ingredient in his success formula... From the fringes of his break in his honor and libations poured upon the altar of friendship... not a few Loyolans, co-workers of Jerry while he was piling up mileage, turned out for the "farewell to arms"... **KENNY LYNCH** is one who got a lot of experience performing for the People of California and put the Golden State deep in his debt... **JOE BUSCH**, already a valued hand at presenting the law those present. The music was open to all. Students and non-students are invited to attend.

**Honor Alumni at Annual Dance**

The Los Angeles Breakfast Club was the scene recently of the annual Loyola Law School Dance, where outstanding alumni were honored, from left to right. S. Ward Sullivan, Mrs. Rosa Leong, John Malone and James Williams.

Two awards were presented at the dance to outstanding alumni:

An award to S. Ward Sullivan (1927) for outstanding service in the field of criminal law. In honor of the late Walter L. Leong (1952), Aggeler Award winner 1952, Mrs. W. Leong was presented with an appropriate memorial.

Some 350 attended the dance with more than 50 alumni among those present. The music was supplied by Johnny Del Fino and his band.

James Williams represented the Board of Bar Governors as dance chairman.

HONOR ALUMNI AT DANCE—Shown at the Annual Loyola Law School Dance, where outstanding alumni were honored, are from left to right. S. Ward Sullivan, Mrs. Rosa Leong, John Malone and James Williams.
Scott Competition
In Opening Rounds
To Select Finalists

Ten second-year students completed the preliminary rounds of the annual Scott Competition on Friday, February 19, 1960, by oral argument before a bench consisting of attorneys William Tucker and John Brink, and Superior Court Judge A. A. Scott. The top six students will compete in the final rounds to be held in their senior year.

The six men who will compete in the finals are Charles Cooper, James McCarthy, John Gallagher, Martin Burke, John Bambrick, and Pat McCormick.

Other participants in the preliminary competition were John Haggerty, Frank Rivera, Al Holt, and Bob Reitiz.

The preliminary competition, which required written briefs and oral arguments, involved a case brought by cedor in the United States Supreme Court as to whether or not civilian dependents or employees of the armed forces overseas can be tried by court martial for the commission of non-capital offenses against the United States.

Charles Cooper placed first in the whole competition, having the highest score in the written brief and oral argument. Pat McCormick took top honors in the oral argument, and John Bambrick won on the written brief.

PAD WILL INITIATE

Ford Chapter, Phi Alpha Delta, has announced that the annual initiation dinner-dance will be held at the Hollywood Knickerbocker Hotel. After the initiation and dinner, there will be dancing to the sounds of the Four Steps. Activities will commence promptly at 6:30 p.m. A prominent guest speaker will be featured.

The annual regional convocation will take place in San Francisco on April 1 and 2, 1960. The convocation will feature talks by prominent Attorneys and Judges on various phases of law and the placement of the law school graduate.

The Padettes are currently conducting a raffle for charity. This year the prize will be a transistor radio. Chances are 25c each.

Seminars and practice exams will be conducted for first and second year men. Heavy emphasis will be placed upon Contracts and Constitutional Law.

In Memoriam

Benno M. Brink

His many friends among the administration, faculty, alumni and students at Loyola Law School regretfully mourn the loss of Professor Benno M. Brink and extend sincere sympathy to the family.

Walter Lincoln Leong

The deepest sympathies of all those at Loyola Law School, his friends and fellow workers, are extended to Mrs. Rosa Leong and the Leong family, in sorrow from the loss of Walter Lincoln Leong, an illustrious graduate of Loyola Law School.