

# THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## Legal Currents

### Dancing with the devil in New York

*This column, featured every Monday, tackles timely issues important to the local legal community.*

*"Guess-ti-mate: an estimate usually made without adequate information*

*— guess-ti-mate \transitive verb"*

*— Merriam Webster's online dictionary*

**BY NICOLE BLACK**

*Daily Record Columnist*



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Last week, in a press release, the New York State Board of Bar Examiners announced that the essay scores of 47 candidates who used laptops to take their bar exams this past July could not be recovered.

"More than 5,000 candidates chose to take the essay portion of the July 2007 New York State bar examination on a laptop computer. Some of these candidates experienced technical problems with the software provided by a vendor but almost all of the candidates' essay answers were eventually retrieved for grading. However, one or more of the essay answers for 47 candidates could not be recovered. Fifteen of these candidates passed the examination based on their performance on the balance of the examination, with no credit being given for any missing essay. Seventeen candidates failed the examination even when attributed a perfect score on any missing essays. The remaining 15 candidates were given estimated scores based upon their performance on the balance of the examination, and their probability of passing was computed. The Board worked with researchers at the National Conference of Bar Examiners to develop and apply this methodology, which resulted in nine of the remaining 15 candidates passing and six failing the examination," the release states.

Or, as adeptly summed up by a commenter on Eric Turkewitz's New York Personal Injury Law Blog: "So,

some of the people failed because the nice people at the bar were pretty sure that they were going to fail after reading the essays that [they] didn't lose?"

Oh, how I wish I had Emily Post on speed dial.

What exactly does one say to the unlucky six on an occasion such as this? Better luck next time? Prozac might help with your sudden onset of depression? Or perhaps: I hear Burger King is hiring?

Although it pained me to do so, after hearing this news, I dredged up memories long forgotten of the bar examination that I sat for in July of 1995.

While I prefer to think that the solid preparation received at my *alma mater*, Albany Law School, was the sole reason that I passed the bar that summer, I must admit that luck very likely had something to do with it.

While I'd never taken Corporations in law school, my study partner and I extensively reviewed that particular area of law during the week before the exam, since it was an area of law with which we were both unfamiliar. By chance, an entire essay was focused on that very topic and I was able to scrape together an answer that was arguably somewhat cogent.

I had no difficulties with the New York Practice essay, thanks to two semesters of excellent (and entertaining) instruction from the King of New York Practice, Professor David Siegel. However, had that essay been lost and had there been a Trusts and Estates essay in lieu of the Criminal Law essay, I can only imagine what my score would have been had it been "guesstimated," as was done with the unlucky six.

In "Batman," when Jack Nicholson as the Joker queries, "Tell me something, my friend. You ever dance with the devil by the pale moonlight?" he may as well have been speaking to

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*Continued ...*

the unlucky six who unwittingly gambled and lost.

It's a sad state of affairs when the equivalent of a roll of the dice determines whether a recent law school graduate is qualified to practice law in the State of New York. The

unlucky six deserved better.

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