

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Wannabe lawyers gamble on the New York bar exam

By **NICOLE BLACK**
Daily Record Columnist

"You only get one chance to roll the dice of life, make your bet wisely."

— Nathan Detroit, "Guys and Dolls"

Just last week, aspiring lawyers across the state endured the anxiety-ridden hazing ritual of sitting for the New York bar exam. Some chose the traditional method of writing out their answers longhand. Others, despite last year's laptop fiasco, which resulted in lost essay questions due to unforeseen technical glitches, made the seemingly brazen choice of utilizing laptops for the essay portions of the exam.

The decision to use laptops might seem perplexing to the technologically-challenged lawyers amongst us who are risk averse. However, the choice is less puzzling when one considers the environment in which this younger generation was raised and educated.

The vast majority of recent law graduates grew up around computers and were allowed — some might even say encouraged — to utilize technology as part of the educational process. They were able to take classroom notes on laptops and, in many respects, keyboards essentially replaced longhand.

Thus, not surprisingly, the prospect of taking a written exam as lengthy as the bar exam likely seemed a daunting prospect to many of them. The option to utilize laptops for the essay portion of the exam was no doubt an appealing alternative to this technologically-savvy bunch despite the obvious risks presented by this choice.

Of course, this year, the New York State Board of Law Examiners did what any self-respecting groups of lawyers would do on the heels of last year's debacle — it issued a lengthy disclaimer and required those choosing to utilize laptops to sign a detailed waiver.

The disclaimer provided for the procedure to be followed in the event of a technological failure and placed the burden of risk

squarely upon the shoulders of the exam-takers:

"Technical difficulties may occur before, during or after the bar examination. Technical difficulties may include hardware or software malfunctions, data saving or retrieval problems, operator errors, upload or download problems, or the loss of electrical power at the examination facility. In the event any technical difficulties occur during the bar examination, **you must handwrite your essay answers in the answer books provided and no additional time may be allowed.** ...

"If you no longer have access to the computer after the conclusion of the examination, you may not be able to retrieve files which could assist in the recovery of missing portions of your essay answers. Should you choose to rent or borrow a computer, you should arrange to keep the computer until after the results of the examination have been released."

In other words, those who chose to utilize the technology which they had been conditioned to use and upon which they increasingly relied were essentially penalized in the event of a technical glitch.

Furthermore, the laptop program implemented this year made it nearly impossible for many test-takers to participate, since it inexplicably precluded the use of Apple computers, which are used in increasing numbers by law students. Apple computers were not permitted even though the software used for this year's bar exam can run on Apple computers. In fact, students taking the Maryland bar exam, which used the same software, were allowed to use Apple computers.

Suffice to say, I am not envious of the choices presented to my computer-reliant, future colleagues: Abandon the technology upon which you've been trained to rely or utilize it at your own risk.

Nicole Black is of counsel to Fiandach & Fiandach and co-authors Criminal Law in New York, a West-Thomson treatise. She also publishes a popular New York law blog, Sui Generis, nylawblog.typepad.com and a blog devoted to legal humor, Legal Antics, nylablog.typepad.com/legalantics.

