

4-1-1992

The Test Masters

UB Law Forum

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/ub_law_forum

Recommended Citation

UB Law Forum (1992) "The Test Masters," *UB Law Forum*: Vol. 6 : No. 2 , Article 6.
Available at: https://digitalcommons.law.buffalo.edu/ub_law_forum/vol6/iss2/6

This Article is brought to you for free and open access by the Alumni Publications at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in UB Law Forum by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

The Test Masters

*Meet the bar examiners ...
Wait! You'll like them!*

When the New York State Bar Exam looms near, no matter how well you've prepared, how many "H's" adorn your transcript, or how much sleep — and money — you've sacrificed for a review course, a moment of pure dread eventually arrives.

"What if...?" comes the fear.

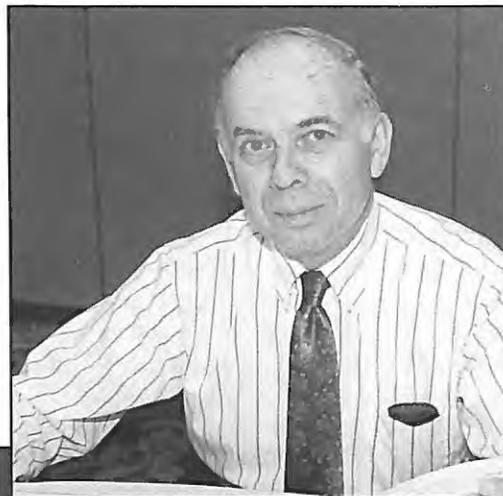
"What if my one weak area turns up big? What if, after working so hard on torts, I forget the rules of contracts? What if there just isn't a right answer?"

And a moment of dark suspicion: "Whose idea is all this, anyway?"

It's easy to imagine the creators and graders of the exam as being part of a faceless state bureaucracy. But let's meet two UB Law School alumni serving on the team of lawyers that writes the questions for the bar exam — and painstakingly evaluates the candidates' answers.

Richard S. Manz, Class of 1954, and Diane F. Bosse, Class of 1976, serve in the Syracuse-based Western District office of the New York State Board of Law Examiners, which is governed by the state Court of Appeals. Manz has been a law examiner since 1969, Bosse since 1979 — starting three years after she herself took the exam.

They're candid about the work involved; and partly because they show up in person to administer the exam on test day, they're not unsympathetic to the plight of the test-takers.



Bar examiners Richard S. Manz '54, top, and Diane F. Bosse '76.

"You really kind of forget how traumatic it is for people to take the exam," Bosse says. "You have to try to reassure people that things will work out."

Their work begins long before that day, though. Being a bar examiner is a sporadic year-round job. They write some of the five essay questions that count for 40 percent of a candidate's score, write a "model" answer for each question they create, and edit the "short form" multiple-choice questions on New York State law that count for 15 percent of the score. (The remaining 45 percent is the short-form Multistate Bar Exam, on the second day of the test.) They review the performance of questions on past tests, looking to see whether a question was a true indicator of legal readiness.

What feels most like work, though, is the chore of evaluating the hundreds of essays they have been assigned. Each team is assigned a single essay question, always one they themselves have written. And for a month after the February exam and two months after the July exam, they do little else but eat, sleep, work their day job — and grade, grade, grade.

Each examiner is expected to grade 250 exam questions a week, assigning each a grade from 1 to 10, until the chore is finished. Manz says when he started in 1969, there were 1,900 candidates taking the July exam. In July 1991, by contrast, 7,700 prospective lawyers took up their eight-page booklets and started to write.

"It's really a matter of discipline," Manz says of the grading

work. "I know I have to sit down in my den and grade from 7 to 10 p.m. every day, faithfully. I know I can't let three or four days go by."

"You learn to carry them around with you wherever you go," Bosse says. "I've gotten a lot of them done in court, while I'm waiting around."

Says Manz: "I remember years ago at Crystal Beach (amusement park), grading exams while my kids were on the rides."

Reading all those essays, a person gets a sense of what a lawyer should sound like, Manz and Bosse say. And they bristle at the suggestion that cleverness, not the solid principles of law, rears its head in the question-writing and grading process.

"I tell students that if they've

done reasonably well in law school, they should have no problem," Manz says. "If you're last in your class in law school and never bothered to go to class, taking a cram (review) course isn't going to help you. But if you have done reasonably well and studied in the cram course, you should do well."

"I don't think we look for cleverness," Bosse says. "Over the years, people know you're a bar examiner and they come up to you and say, 'I've got a great question for the exam.' But it almost never is, because it's a question with no answer. ... You want a question that's going to distinguish between a good candidate and a bad candidate."

The examiners' tips for prospec-

tive lawyers sound like the advice your teachers gave you before taking the Regents exams in high school: Be concise. Read the question carefully. Think through the answer before you write. Don't put in a lot of superfluous stuff.

"When I'm grading an exam, I'm always thinking, 'Does this candidate sound like a lawyer?'" Manz says. "It's obvious when someone's throwing the bull."

In years past, candidates wrote their essays in four-page answer booklets. Now they are given eight-page booklets, and seem to feel obliged to fill the space. But most questions, the examiners say, can be answered correctly in three or four pages of average handwriting.

"There are no points in our grading system for superfluous stuff," Bosse says. "If there are eight exceptions to a rule, and we ask about one of them, people feel compelled to list all eight."

"Time is a factor on the exam. Don't waste your time listing superfluous stuff. If I'm asking about arson, I don't want to know about burglary. It's praiseworthy that you know that, but it doesn't get you any points."

While the bar examiner's job is salaried, it's no way to get rich. Why, then, do they do it?

"I really liked law school," responds Bosse, whose practice concentrates on personal injury defense cases. "This (bar examiner work) gives you a chance to research areas of the law that you wouldn't normally be exposed to."

Manz, who is in general practice, takes a less ascetic approach. "I feel like I'm doing a little something for the profession," he says. "But as the card sharp said in the Old West, after he was discovered, tarred and feathered, and ridden out of town on a rail ... if it wasn't for the glory of the thing, I'd give it up altogether." ■

Oops!

Once in a while, says Richard S. Manz and Diane F. Bosse, a prospective lawyer gets his Parker Bros. tied in a knot. The results can bring a little levity to the drudgery of grading the New York State Bar Exam.

They remember in particular one recent question concerning a couple undergoing a year's separation prior to a divorce. The couple got together for New Year's Eve, for old times' sake. "We really got some interesting answers on that one," Bosse says.

Some other goofs, gaffes and godawful blunders, courtesy of Manz's files:

The living dead: "One of the requirements for a will is that the testator and the beneficiary cannot be the same person."

Goodness of his heart: Evaluating the rights of an out-of-wedlock child, one candidate had a novel approach: If Sue is deemed to be Hal's child, Sue could benefit if the court construes that the support of Sue would be deemed a "qualified charity."

Play ball! On a question involving the Uniform Commercial Code: "As to Flo's damages, the UCC has a rule best expressed in language of the National Basketball Association, 'No harm, no

foul.' Flo has not been damaged."

All tied up: Defining "entrapment" in criminal law, one candidate opined: "Entrapment ... is the involuntary restraint of an individual against his will in an area where he or she reasonably believes he or she has no reasonable means of escape."

"But," Manz says, "it's the area of marital relations that always evokes the most interesting answers." Among his favorites: one candidate's assertion that "One ground for a divorce is annulment."

And as to the aforementioned case of the New Year's Eve tryst, a bushel full of speculation:

"There is no information if the parties slept together or cohabited in separate rooms or on separate floors, and the reason for the cohabitation may have been for the convenience in the child-transporting area."

"Sex is not the measure of cohabitation by itself."

"Cohabitation one night is not cohabitation per se."

"Any cohabitation nullifies the requirement of living apart for a full year, but courts liberally construe the agreement on basis of facts peculiar to a case, i.e., if the meeting was a family gathering or for business, it might hold the other way."

"It does not appear that Husband and Wife had sexual relations while they were cohabiting."