

Raising the Bar and the Meaning of Success

California's Notorious Legal Exam Becomes a Crossroads Where Failure Can Lead to Happiness

By Anna Oberthur

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SAN FRANCISCO - What do Los Angeles Mayor Antonio Villaraigosa, constitutional law scholar Kathleen Sullivan, Oakland Mayor Jerry Brown and former Gov. Pete Wilson have in common?

They have all failed the California Bar Exam.

Like this illustrious group before them, thousands of hopeful test-takers found out late Friday that their long hours of sweat and tears last February have amounted to nothing more than disappointment.

For those defeated souls - a dreary but fairly typical 61 percent of Bar Exam participants - it may be a comfort to know that while they're not licensed attorneys, they are in good company.

The legal landscape is filled with people who failed the exam but went on to successful careers in the law - though many of those two-, three- and four-time test takers won't admit it publicly.

If test-failers eventually need an alternate role model, there are plenty of law school graduates who have flourished in non-legal careers. Many of these people say they're much happier for it - like Markos Moulitsas Zuniga, the Berkeley-based writer of the popular political Web log Daily Kos.

Moulitsas, who made one unsuccessful attempt to pass the bar during a "bout of unemployment," is currently on a promotional tour for his first book.

"Thankfully, I found a different path to professional success than living the insane life of a brand new associate," Moulitsas said in an e-mail. "And seeing my lawyer friends try to deal with the lifestyle - including a whole rash of divorces - I don't regret my decision one bit."

Bar exam hopefuls striving for a different style of fame should look to Villaraigosa, whose four failed attempts to pass the bar haven't hindered his successful political career. Villaraigosa, Los Angeles' first Hispanic mayor in more than a century, took office last summer after serving on the Los Angeles City Council and as speaker of the state Assembly.

The mayor's office didn't respond to the Daily Journal's inquiries. But when contacted by the Los Angeles Times on the topic, the newspaper reported that Villaraigosa was unable to explain the failures.

"All I can tell you is that I failed four times," Villaraigosa told the Los Angeles Times earlier this year.

Among the ranks of those who have been outed as exam-failures, Brown, who is currently preparing a run for California attorney general, triumphed on his second attempt. For Wilson, four goes were necessary before he earned a passing score.

Former Stanford Law School dean Sullivan needed just one warm-up - she was among the relieved who found themselves on the list of passers Friday.

Frustrated examinees should be thankful they weren't in Sullivan's shoes last December, when her failure to pass was published on the front page of the Wall Street Journal. Sullivan, who recently joined Quinn Emanuel Urquhart Oliver & Hedges' appellate practice in Silicon Valley and remains on the Stanford faculty, was already licensed to practice law in New York and Massachusetts.

Sullivan wasn't available for an interview Monday. In a statement issued by Quinn Emanuel, she expressed her happiness about joining the California bar but did not mention it was her second try.

"The problem with the bar exam is there are people who are really bright, who know the law, who don't pass because they just can't, somehow, in the crunch of time," said Hindi Greenberg, a Nevada City career counselor for lawyers and law school graduates. "We're not all quick thinkers. The bar isn't realistic - that isn't how people practice law."

The three-day California Bar Exam is considered to be one of the country's most difficult. In 2004, the most recent year comparable statistics are available, only 44 percent of those who took

the state bar passed it, compared with 64 percent nationwide, according to the National Conference of Bar Examiners.

The Bar Exam is given twice a year, in February and July. The February pass rate usually is much lower than the July pass rate. For example, in 2004 the February pass rate was 35 percent compared with 48 percent for July test takers.

Rosemary La Puma teaches legal writing at two San Francisco law schools and is the author of "If I Don't Pass the Bar, I'll Die," which looks at the exam from a psychological point of view.

"It's a mental toughness test," said La Puma, who is a bar exam tutor and thinks dealing with stress and worry is the key to being able to pass. "We want to see what happens if we put a gun to your head. Do you fall apart under pressure?"

According to La Puma, the "freak-out factor" is huge.

Test takers are placed in a huge auditorium filled with hundreds of fellow examinees and dozens of proctors. There's even a proctor in the bathroom.

"You walk in and you can feel the tension in your chest," La Puma said. "I tell students they are going to lose 15 to 20 percent of their skills right there."

Sometimes it's not just nerves.

There are some test takers who deliberately, but unconsciously, self-sabotage because they don't really want to be lawyers, according to Greenberg, author of "The Lawyer's Career Change Handbook."

"There are people who don't pass the bar because they really don't want to, in their heart of hearts," Greenberg said. Once they accept that reality, "they can move on and say, 'What I really want to do is be a potter.'"

Moulitsas acknowledged he didn't pass the bar because he didn't want to be lawyer. But unlike the people Greenberg describes, the blogger knew he felt that way going in to it.

"I wanted to pass the exam out of pride and to justify the expense, but I was a bit relieved when I didn't," Moulitsas said. "Mentally, I had already moved on to bigger and better things."

Moulitsas' book, "Crashing the Gate," has been a critical success, and his Web site gets more than 500,000 visits a day and is considered one of the nation's most popular political blogs.

This year Daily Kos will host a conference for its readers in Las Vegas, where the list of speakers includes U.S. Senator Barbara Boxer, House Democratic Leader Nancy Pelosi and Howard Dean, a sure testament to the site's influence.

Moulitsas knew immediately upon starting law school that the legal profession wasn't for him. But since dropping out would have suggested failure, he stayed and earned his JD.

Not passing the exam was ultimately irrelevant to the rest of his life, "other than about five minutes of hurt pride," Moulitsas said.

On the other side of the spectrum is Rick Alvarez. The 1994 Hastings College of the Law graduate passed the bar exam on the first try.

"Thank God," he said.

Although he initially thought he might like to be an entertainment lawyer, Alvarez soon realized that law wasn't for him.

Instead, he carved out a different kind of Hollywood career. Alvarez is a television and movie producer at Wayan Bros., the studio that produced the "Scary Movie" films and "White Chicks." Though he's never practiced law, he says he uses the analytical skills he picked up in law school.

"I think people look at what I do and I think it makes them go, hmm, maybe there is something out there a little different," Alvarez said. "Several of my friends just love being lawyers, they just love it. And others wish they probably had made another choice."

"It's a difficult thing. You spend all that time, three years of school and all that time with the bar and not to practice is scary idea for some people," he said.

Of course, some people don't yet have a choice.

For those folks considering retaking the exam, the Uncivil Litigator, the author of a popular legal blog, has this advice: "Obviously there are many unfortunates out there who have failed the bar twice or even more. To them, my candid advice ... is to seriously consider pursuing career options that won't require you to take the bar exam at all. It may be time to cut your losses and move on."

Real estate, financial services, public relations and communications, writing, and business are all jobs that law school graduates can be well suited for, Greenberg said.

According to Sari Zimmerman, the director of career services at Hastings, "People are seeing how their law degree can really be a stepping stone to so much."

For some, it is because they didn't pass the bar, Zimmerman said. But for others, "even though they have the law degree and bar under their belt, they are still making the conscious decision to use their law degree in a really creative way."

For example, Hastings has among its alumni a hypnotherapist and the director of a state sailing association, she said.

Of course, there are always those notorious few who don't let that pesky license issue stop them from practicing law.

Last year, a 62-year-old Glendale man was accused of having practiced law without a license for more than 30 years.

Irwin Trester eventually pleaded no contest to felony grand theft by false pretenses and one misdemeanor count of unlicensed practice of the law.

According to the Los Angeles County District Attorney's office, Trester, although licensed to practice in Kansas, took and failed the California bar exam four times in the late 1960s.

In spite of that, the district attorney's office said, Trester set up his own law practice in Los Angeles and over the years represented clients that included the Hollywood Wax Museum, SEIU Local 99 and the Best Western Executive Inn.