

PASS THE BAR!

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PASS THE BAR!

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Professor Riebe

It's fascinating to witness a variety of professional and life experiences merge to produce a text such as *Pass the Bar!* I'm grateful for the widespread support I've received for this project, and I'd like to thank everyone who has supported my efforts.

Thanks first to my family: my husband, Mike, and our wonderful daughters, Elizabeth and Hannah. It's my hope that Elizabeth and Hannah will both become engaged learners whose lives are enriched by life-long learning, and that they'll find in their careers the level of satisfaction I've experienced coaching students.

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Professor Schwartz

The opportunity to write a set of acknowledgements daunts me because of the difficulty of including everyone who has influenced my life and work. But I also enjoy the process because it gives me perspective. So, here goes.

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Professors Riebe and Schwartz

We thank all of the professors working in academic success programs at law schools across the nation, an incredibly dedicated group of professionals who have a positive impact in the lives of thousands of law students. Since we undertook writing this text, we've had widespread support from academic success professionals—including colleagues we've met at conferences and others we've never met in person who have sent us e-mails congratulating us on our publication contract and expressing their interest in our work.

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We also thank our publisher, Carolina Academic Press, our primary contact, Robert Conrow, Jennifer Gilchrist, and Erin Ehman for making the publication of our text a reality.

Further, we thank the Law School Admissions Council ("LSAC") and the American Bar Association ("ABA"). As organizations, both the LSAC and the ABA have recognized the obligation that legal educators have to assist students in passing their bar exams and becoming practicing lawyers, and the link between bar passage efforts and student recruitment, retention, placement, and increasing the diversity of our profession. We especially thank Kent Lollis, Associate Executive Director and Assistant to the President for Minority Affairs at the LSAC, a committed professional who spearheads numerous projects to increase the effectiveness of legal education and to increase the diversity of the profession.

—Denise Riebe

—Michael Hunter Schwartz

August 2005

FOREWORD

Once in awhile, the perfect book comes along at the perfect time. *Pass the Bar!* is just such a book, arriving at an ideal time to help law students and legal educators get a grip on how to maximize each student's chance for success on the bar exam in the jurisdiction of his or her choice.

In their Introduction, the authors accurately refer to the bar exam as the “last hurdle” in a student's quest to become a licensed attorney. The approach the authors take to help a student clear this hurdle is both logical and powerful, and would immediately enhance any bar taker's chances of success. Beginning with critical background information about the application and examination process, the book moves to foundational educational principles that will increase the student's ability to learn effectively, and then to concrete strategies each student can use profitably to approach multiple-choice, essay, and performance questions with confidence. While this book would be useful at any point in a student's legal education, it would be particularly valuable to rising third-year law students who are facing the reality of a bar exam within a year.

Each chapter contains core concepts that are followed by reflection questions and hands-on exercises that pull the reader into the subject at hand. These questions and exercises turn what might otherwise be an overwhelming sea of information into useful knowledge that is personally meaningful to each reader. Rooted in active learning principles, the book could easily be used as a self-instructional guide by individual students seeking answers to their bar exam questions.

And while the book is an empowering self-instructional tool, it lends itself equally well to use in a group or classroom setting. For many learning styles, there is strength in numbers. The synergy created by a group of students who choose to go through the chapters together, or in a classroom led by an experienced law professor, would enhance the learning of each group participant. In any case, the tone of the book is so congenial and the information so accessible that each reader—whether working in a group or working alone—will develop a sense of personal engagement with the authors throughout the book.

The powerful impact of this book's logical structure should come as no surprise. The authors are experienced legal educators with shared expertise in bar preparation and legal learning. After graduating with honors and law review credentials from Wake Forest University School of Law, Professor Denise Riebe began her career practicing in an international law firm and then became the regional director for a commercial bar review company. Later, she moved into legal education, earning high student praise as an adjunct professor here at the University of North Carolina School of Law before moving to a position at Duke University School of Law. Professor Michael Hunter Schwartz has been a law professor for over thirteen years and has specific expertise in law student learning and law school teaching. Recently, he published *Expert Learning for*

Law Students, a book that has its roots in self-regulated learning theory and in his practical expertise as director of the STELLAR™ law student program at Western State University College of Law in Fullerton, California, a highly successful academic support and bar preparation program.

Pass the Bar! gives every law student—and every legal educator working with students—a tool that can be used to help students clear the last hurdle in the race they began when they started law school. Rather than facing that hurdle uncertain and alone, any student can now approach this challenge with confidence and with a coach by his or her side. It is a book I will recommend happily to generations of students as they gather their energy to cross the finish line in this important and challenging race.

—Professor Ruth Ann McKinney
Director, The Writing & Learning Resources Center
The University of North Carolina School of Law
Chapel Hill, North Carolina

PREFACE

The time for your bar exam—the final hurdle for obtaining your law license and becoming a licensed attorney—is drawing near. If you’re like most students, you’re feeling some apprehension about, and aren’t looking forward to, the bar exam—and for good reason: there’s a lot at stake! The good news is that by understanding the bar review and bar exam process, making strategic studying decisions, and following a smart study plan, you can pass the bar. That’s what this book will help you do.

So, what do we know? And why should you believe that we can help you pass the bar?

Professor Riebe’s first contact with a bar exam was taking—and passing!—the Virginia bar exam in 1986. After practicing for two years with a large, international firm, she moved to North Carolina and sat for—and passed!—the North Carolina bar exam. Then she became the North Carolina Director for Bar/Bri, a national bar review company.

In her role as the North Carolina Director of Bar/Bri, she inevitably met students who were unsuccessful on their bar exams. (We’ve yet to see a one hundred percent passage rate in any state.) Her heart went out to these students. After thousands of dollars and years of time invested in becoming attorneys, these students were devastated by their failure to pass their final hurdle to becoming licensed. Perhaps even more painful, it was a public failure—fellow students, friends, families, and employers all knew that these students, consistently high achievers, had “failed.”

Professor Riebe wanted to know what differentiated passers and “repeaters” (those failing their exams who would need to take the exams again), and she felt a personal obligation to help those who used her company’s products.

In 1994, she started informally meeting and talking with repeaters, debriefing them about their bar exam experiences, and trying to diagnose why they weren’t successful in passing their bar exams. She also started helping repeaters prepare to take the bar a second time—explaining the process and helping them with study plans and essay writing. And it worked. Despite the low passage rates that repeaters face,¹ a high percentage of the repeaters with whom she worked passed the bar on their next attempt.

Professor Riebe eventually left her job with Bar/Bri to teach at the University of North Carolina School of Law in Chapel Hill, North Carolina (“UNC”). At UNC, she had another opportunity to work with repeaters when the Director of the law school’s

1. Students repeating bar exams have significantly lower passage rates than first-time takers. See National Conference of Bar Examiners, *2004 Statistics*, THE BAR EXAMINER 10–12 (May 2005), available at www.ncbex.org/pubs/pdf/740205_2004statistics.pdf. For example, here are a few comparisons of passage rates for first-time takers and repeaters for the July 2004 bar exam: Alabama, 86% compared to 17%; Georgia, 87% compared to 29%; Michigan, 76% compared to 28%; and Maryland, 73% compared to 23%. *Id.* at 10–11.

Writing and Learning Resources Center invited her to help coach a group of students who were repeating their bar exams. At the same time, she started a consulting and coaching company, Pass the Bar![®], to provide individualized services to students preparing for bar exams.

Through her experiences with bar review courses, bar exams, consulting, and coaching students, Professor Riebe has developed a good sense of what separates passers from repeaters, and consequently what it takes to pass the bar. Since bar examiners keep most test results confidential, and usually only repeaters have a right to review their exams, her perspective is necessarily based on her first-hand experience. Her personal experience has been that, in most cases, not much separates passers and repeaters—just a little more work, information, or focus. What a shame, she thought, not to provide an early heads-up to save students the pain and price of failing.

Fortunately, the law schools where she teaches—she’s now a Senior Lecturing Fellow at Duke University School of Law in Durham, North Carolina, and still an adjunct professor at UNC’s School of Law—allow her to teach bar exam workshops to third-year students so they can start preparing themselves for the bar exam before their bar review courses begin.

Professor Schwartz also passed a bar exam on the first try—the dreaded California bar exam. He then practiced law for four years before becoming a law professor. He has taught law for thirteen years now, teaching many subjects that appear on bar exams (agency, contracts, corporations, criminal law, and remedies).

Six years ago, Professor Schwartz assumed responsibility for the academic support and bar passage programs at Western State University College of Law in Fullerton, California (“Western State”). He was drawn to this work by his interest in learning and his heartfelt belief that law school and bar passage failures are the result of curable problems, not lack of ability. Some of the curable problems include inappropriate study strategies, insufficient persistence, inadequate time management, inadequate stress management, insufficient motivation, and lack of self-confidence.

Accordingly, Professor Schwartz designed and implemented programs at Western State aimed at increasing his law school’s bar passage rate while reducing its academic attrition (“flunk-out”) rate. These programs have proven successful: even though student-entrance credentials did not change, and the first-year attrition rate decreased by 67.5%, approximately 35% more students passed their bar exams on their first attempts than had done so in the past.²

Professor Schwartz has also written extensively in the areas of law school teaching and learning methodology.³ His book, *Expert Learning for Law Students*, is designed to

2. When Professor Schwartz took over Western State’s academic support and bar passage programs, the law school’s bar passage rate was hovering around 34% (29% at its lowest point). Since then, the law school’s passage rate has steadily climbed (with the exception of some February bar exam deviations) as follows: 34% (July 2001), 43% (Feb. 2002), 44% (July 2002), 41% (Feb. 2003), 46% (July 2003), 40% (Feb. 2004), and 49% (July 2004).

3. See, e.g., MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* (2005); Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. D.C.L. L. REV. 447; Michael Hunter Schwartz, *Teaching Law By Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001). Professor Schwartz is also a member of the Steering Committee for the Clinical Legal Education Association’s monograph on legal education, *The Best Practices of Law Schools for Preparing Students to Practice Law* (forthcoming 2006).

teach first-year law students to learn successfully.⁴ In recent years, he has also given presentations about teaching and learning research to law faculties and at conferences across the country.

By sharing our expertise relating to research about how students learn and the bar exam process, we hope this book will help you maximize your chances of passing your bar exam. Specifically, our intent is to help you understand the bar review and bar exam process, develop realistic expectations about the process, and develop an individualized plan for success.

Although we designed this book to help you maximize your chances of success on your bar exam, passing your exam is up to you. It requires your own personal commitment to making your bar review and exam a priority. It's up to you to take on and tackle this process, and your level of motivation will be a primary factor in your success.

In addition to your level of motivation, your success will be determined by both your aptitude and level of optimism.⁵ Research demonstrates that aptitude is an imperfect predictor of success; pessimists drop below their potential and optimists exceed theirs.⁶ Thus, your level of optimism will be a key factor determining your success. Fortunately, as chapter 3 explains, optimism is a factor that you can completely control.

If you're committed to doing the best you can to succeed on your bar exam, where do you start and where do you go? Here's how we recommend you use this book: first, skim through the table of contents to obtain an understanding of its structure and topics covered. Then, read chapter 1 and look over the action plan checklists in chapter 2. Note which time frame you're in, and do the checklist items for that time frame. (Make sure to refer to the corresponding chapters because the checklists are just shorthand lists of items you need to accomplish).

Then, continue to proceed through the book. You'll notice that we've included many checklists and exercises throughout. We urge you to use them to integrate the information you've read. Educational research demonstrates that you'll be a more successful learner if you take the time to integrate information with active learning techniques like the ones we've provided throughout this text.⁷

Note that, as you work through this book, you'll likely find that many of the points made seem elementary. That's great, but please do not disregard them. Many students who are unsuccessful on their bar exams realize, in hindsight, that they've failed to understand fundamental points. One of our goals is to ensure that you understand the bar review and exam process on the front end—so that you don't miss any of the fundamental points that many students who fail their bar exams overlook.

Finally, remember: if you can get into and graduate from law school, you, too, can pass the bar! Whether you will is up to you.

GOOD LUCK!

4. Professor Schwartz's self-regulated learning book and articles have been required readings at law schools across the country, including Cleveland-Marshall College of Law in Cleveland, Ohio; Michigan State University College of Law in East Lansing, Michigan; University of Dayton School of Law in Dayton, Ohio; University of the District of Columbia David A. Clarke School of Law in Washington, D.C.; and Western State.

5. MARTIN E.P. SELIGMAN, *LEARNED OPTIMISM* 137, 154 (2d ed. 1998).

6. *Id.*

7. E.g., Alan K. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers*, 32 AKRON L. REV. 107, 116 (1999).

