Hiring partners don't mention it, would-be associates won't touch the subject, and law schools would rather avoid the issue altogether. But the possibility of failing the bar exam becomes a reality for tens of thousands of law school graduates each year. And it's getting worse.

In February, lawyer hopefuls across the country sat for the bar exam, many taking a second shot at the rite of passage after failing the test in July. If the results for February's test-takers are in keeping with recent pass rates, plenty of those graduates - or the majority, in many jurisdictions - will face failure once again.

Nationwide, some 28,110 people failed the test in 2004, for a 64 percent pass rate. By comparison, 65 percent passed in 2000 and 70 percent passed in 1995.

Some observers point to higher pass scores required by some states as the culprit, others note a proliferation of new and unaccredited law schools, and still others blame a lack of preparation provided by all law schools. Indeed, the situation has become such a concern that law schools have begun implementing for-credit bar review courses into their curricula.

Connecticut's results aren't nearly as dismal. In 2004, 73 percent of the 1,180 people taking the state bar exam earned passing marks. Last year's 1,274 test-takers improved slightly with a 74 percent success rate. Those percentages reflect a trend dating back to 2000 when 73 percent passed the state bar exam, according to the Connecticut Bar Examining Committee.

Quinnipiac University School of Law professor Richard Litvin has studied bar exam trends for years and discusses the importance of preparing for the test. He relays a situation that he says is common around the country: a newly hired associate receives notice that the first law school loan payment is due followed by a letter announcing failure on the bar exam, which leads to being laid off by the firm. Litvin has seen it all happen within a week. "It's devastating," he said.

Indeed, the failure to obtain a law license is creating a crisis situation for a growing number of graduates who sit for the exam, often burdened with crippling debt.

"My whole family was depending on me, but you can't let it suck you into the abyss," said a graduate who took the Pennsylvania bar exam three times before passing it and requested anonymity for this story. With two small children, she was $130,000 in debt after graduating from William Mitchell College of Law in St. Paul, Minn. She will start a job in a district attorney's office in a few weeks.

Although nationally fewer graduates are conquering the test, apparently law firms are not taking pity. In fact, many firms in recent times have adopted a strict "two strikes" policy, said Susan Robinson, associate dean for career services at Stanford Law School.
A holdover from the dot-com years when firms bulked up their ranks and then needed to slash jobs after the bust, law firm policies allow for few, if any, exceptions to the two-strikes rule, Robinson said. "Firms," she said, "used to be more flexible."

At Hartford-based Day, Berry & Howard, the two-strikes rule is softened a bit. After the first failure, the firm pays for a bar review course, provides a paid leave of absence for as long as one month and encourages mentoring relationships among colleagues. After the second failure, the same support system exists except any time taken off to study must be unpaid or vacation time.

The situation of failing even once, however, arises infrequently at the firm, said Jonathan Handler, chairman of DBH's hiring committee. It's "such a rare occurrence. You could probably count the number of [associates at the firm who have failed the state bar] on one hand, in the past 10 years."

Unfortunately, for those who do not pass the first time, the percentage of success drops significantly. Among law students at the University of Connecticut, Quinnipiac and Western New England College in Springfield, Mass., who took the July 2004 exam, 77 percent passed the first time, while only 41 percent passed the retake.

Dating back to July 2003, UConn law students have achieved the highest rate of success on the state bar exam, according to the Connecticut Bar Examining Committee. Eighty-seven percent passed on the first attempt with 50 percent passing the repeat test that year. Quinnipiac students registered a 69 percent success rate on the initial try and 38 percent on the second; Western New England followed at 55 percent and 25 percent, respectively.

The lamentations of repeaters are evident on a popular blog, The Uncivil Litigator. One lawyer hopeful posted last month to the online journal, "This is my fourth time taking this stupid test in California, and if I don't pass, I'm thinking about killing myself. That is, if my parents don't kill me first."

Another wrote, "Law school is the biggest mistake I ever made in my life. ... I am having a nervous breakdown to the point that I can't even study."

Few law school graduates can ignore the fear that the testing gods may fail them on exam day, and the chances for flunking have not escaped some of the most renowned legal professionals. Kathleen Sullivan, former Stanford Law School dean and a former Harvard Law School professor, last year was one of the unlucky ones. Los Angeles Mayor Antonio Villaraigosa bungled the exam - four times, no less - and the late John F. Kennedy Jr. needed three tries to pass the New York bar exam.

California generally has the lowest pass rate each year in the country, usually around 50 percent. Other states with relatively low rates include Delaware, Alabama and Louisiana. High pass rates often are in Utah, where generally about 88 percent succeed. Montana also routinely has high pass rates, often above 85 percent.

Exam takers in 48 states all endure the same one-day, multiple-choice test, called the multistate bar examination, although the number of right answers required to pass varies depending on the jurisdiction. Individual jurisdictions also administer exams on state law on a second day, usually in the form of essay questions. Some states also give a practical-skills exam on a third day of testing.

The reasons for the failures apparently are numerous.

Some states, including New York, have raised the so-called "cut score" on their exams, meaning the minimum score required to pass. As of 2005, New York examinees needed to earn an additional five points to qualify for licensure. In July, the pass rate dropped one percentage point from the prior year and two from 2003.

Other states raising their minimum passing score in recent years are Florida, Ohio and Illinois.

"I'm not sure that the bar exam is getting harder. It's the cutoff line that really seems to make the big difference," said Denise Riebe, a senior lecturing fellow at Duke Law School and the author of "Pass the Bar!" (Carolina Academic Press, 2005). Another possible reason for the escalating failure rate is a growing number of new and unaccredited law schools. Since 2003, at least seven new law schools have popped up across the country, but most of them are in the process of acquiring accreditation from the American Bar Association. Those schools are different from non-accredited schools, which do not seek ABA approval.

In 2004, some 3,457 graduates from non-ABA accredited schools in 23 states took the bar exam. Only 26 percent of those graduates passed.

Schools without ABA accreditation typically do not follow the organization's rules pertaining to student/faculty ratios, library services, faculty credentials and more. About half of those schools are accredited by the state, which allows students to take the bar exam, Sebert said, adding that the other half are not accredited by the state nor the ABA. Students at those schools must take a "mini-bar" after their first year to qualify to take the exam after graduation, he said.

A lack of preparation provided by all law schools may be another reason for the high number of failures. The traditional preparation method of post-graduation cramming and commercial bar courses, such as BarBri and MicroMash, is insufficient, say those who argue that law schools are not taking their share of responsibility in helping students pass the exam.
Bar Exam Failures Face Job Flameout

Riebe, at Duke, said law school grades are among the chief indicators of success on the bar exam, and most law schools can identify the point at which students falling below a certain mark will likely fail the test, even if they remain in good academic standing. But law schools historically have not been in the "academic support/personal support" business, Riebe said. That may be changing, however. Pursuant to a recent rule modification by the ABA, law schools for the first time last year began offering their own bar-preparation courses for credit. Although the classes cannot count toward the minimum number of credits needed for graduation, students attending law schools that require more credits than the ABA minimum can receive credit for taking the courses.

"Every school struggles with this," said Paul Chill, UConn Law's associate dean for academic affairs and a clinical professor of law. "We feel an obligation to offer academic support; but the question is when and how do we implement it?"

This fall, UConn will offer a class targeting students in the lowest 10 percent entering their third semester. While the class is voluntary for those students identified as at-risk, a meeting in the summer with a faculty advisor is not. Chill estimates 25 students will participate. Several years ago, a similar program was mandatory at UConn. Students whose grade point averages fell between 2.3 and 2.6 were required to attend the course; the program was discontinued after the 2003-04 year because there was no proof that students benefited, and with only a handful of students enrolled, staffing the class with a full-time faculty member proved inefficient, Chill said.

"I'm very excited about [the new program]," he added.

UConn also offers academic support and tutoring to second-semester students and a summer program for incoming students based on their GPA and LSAT scores.

Law students at Western New England in Springfield must maintain a 70 percent average to remain in good academic standing. But once a student's grades drop to 73 percent, Eric J. Gouvin, law professor and associate dean for academic affairs, keeps the student on his radar, he said.

But all the commercial courses, law school assistance and employer support mean little without the graduate's own hard work, said Mark Rosenthal, hiring partner at 165-attorney Jeffer, Mangels, Butler & Marmaro in Los Angeles. A few years ago, the firm hired a Harvard Law School graduate who decided to take an extended honeymoon with her husband, who graduated from Harvard at the same time, instead of buckling down for the exam, he said. They both failed. He is reminded of their situation when he speaks to the firm's new associates each year.

"I talk to them about taking it seriously," Rosenthal said, adding, however, that having the right mindset is crucial. "The hardest part of passing is not worrying about it," he said.

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