

Jackson Mumey:

Hi, and welcome to Celebration Bar Review. This is, I think, the final in our countdown of the top ten myths, but I'm having so much fun I may come up with a new top ten list of more myths. We're wrapping up a series of ten videos about myths about the bar exam. Just quickly to recap our list so far, number ten was "it's all about me." Number nine in our list of myths was "practice more questions." Number eight was "work harder." Number seven was "it's not fair, the test is not fair." Number six in the list was "fool me once," all about how people try to game the exam. Number five was "know the law cold." You've heard that one before, I'm sure. Number four was "it worked in law school," something we hear a lot. Number three in our list of myths was "you need to spot all the issues." Number two in the list was that famous bromide, "don't repeat the facts."

Now, if I could do a drum roll I would, but the number one myth that I have found in nearly twenty years of doing this is the following: "Memorize this." In other words, this is the myth about memorizing and reciting the law. It's the thing that most people think that they're going to be required to do on the bar exam and that they spend most of their time and energy working on, how to memorize and then recite, whether it's in an essay or to memorize for the multi-state exam, whatever the part of the test or the state multiple choice part, "memorize, memorize." Not a week goes by that I don't hear from students about should they create flash cards, or should they make extra outlines, or should they do something that will help them to memorize the law?

Here's the reason that it's a myth. If you've been in practice or if you've had occasion to see attorney's in practice, I want to just ask you quickly, when's the last time you saw an attorney actually memorize and recite something? I'll wait. Oh, yeah. They don't, do they? You see, it's really not about memorization when it comes to the practice of law. Today we have all sorts of tools out there, computer things, everything from Google, Westlaw, Lexis, to first year associates who can go get you the law. It's not necessary to memorize. There may have been a time long, long ago, way before any of our era, when memorization and recitation was in fact important. Indeed, when I read Lincoln's Team of Rivals by Doris Kearns Goodwin, it appears that most of the folks in Lincoln's day that were practicing law, were reading the law, were in fact memorizing, and I certainly think that was true before his time, but today people don't memorize the law.

Here's the reason that that becomes an important distinction. The bar examiners, contrary to some opinions, don't live in ivory towers. They actually function out there in the real world dealing with judges and attorneys and the communities that they serve. In that capacity, they recognize, as I think anyone who is actually in the legal world, that memorization doesn't have much value anymore. It's a useless skill. It would be like being someone that shoes horses rather than repairs transmissions. It's an old skill and it's gone. If the bar exam really measured that skill, if that was the primary, number-one skill to be measured, what would that really tell the bar examiners or the community

about someone's fitness to practice law? I think the answer is it wouldn't tell you very much at all.

Think for a moment. I've used these examples in other places, but if you think about Dustin Hoffman's Rain Man in the movie, who was an autistic savant, or in Boston Legal there was a character in that show, which is now gone, but Jerry Espenson, who had Asperger's, they were people who can recite and memorize, but have no people skills, they have no common sense, they have no ability to take the information and use it. Isn't that really what a lawyer is required to do? When we call a lawyer "Counselor", don't we really mean it's not their ability to memorize and recite, but it's their ability to use what they know and to put it to good use, to put it to advice and counsel to their clients? It seems to me that that's a better skill to measure than the skill of whether or not one can memorize all the elements of tort, negligence, or of a formation of a contract or what constitutional provision goes where. That's not necessary.

Sometimes students will say to me, "Well, do I need to memorize case names and statutes?" The answer is: no, of course not. No one would expect you to know the statute coding in any state. No one would expect you to know, other than a handful of major significant Supreme Court cases over the years, any of those case names beyond that. It's simply not a requirement for the functioning of a good lawyer. The bar examiners know that, and so when they write their tests, they don't write them on the basis of whether someone can memorize and recite. Take the multi-state exam if you're still skeptical. That test is a test of detailed information. You might say, "Yes, I have to memorize all the elements to pass it. It's a black-letter law test." Really now, think a little more carefully. Isn't it really a test that's got four answer choices, and you have to distinguish which one of those four is best, even if it's not always entirely correct or accurate? Because, indeed, one could make an argument that it's not the perfect or correct answer, the point is it's the best of the four answers.

Memorization by itself would do you very little good if you lack the discernment to tell the difference between one answer choice and another. In fact, very often two of those choices on a multi-state question will have the same outcome but for different reasons. If you had memorized only, you'd know this is the result, but you wouldn't know why necessarily, or why one answer was better than another. You might be saying, "Well, that might be so on the multi-state, but of course in the essays I must be able to memorize all the elements." Why? Imagine for a moment going into a court room in a trial and saying, "Your Honor, we're here in this trial today, and before we get very far, I want to tell you all the elements of formation of a contract." "Why, Counselor? Why was that important?" "Well, it's not really, but I memorized them all and I just thought you'd be really proud of me if I could show you that I know them."

You can see how this notion of memorization really doesn't give you much. The examiners would say, "Wow, this isn't really the kind of person that we want as a member of the bar." Therefore, if it's not a skill that's really useful in practice, and if the examiners don't particularly value it, why would you spend your time, your valuable study time, working on something so irrelevant? You might say, "Well, it must be so, because the mega bar reviews all tell me to memorize, to

know the law cold, all those things that we've talked about earlier." I will say again what I've said before. That's a matter of bar review economics, it's not a matter of teaching. You see, it's much easier if you've got a room filled with a hundred people to say to those students, "You all go out and memorize the law," instead of saying, "Learn how to use the law," because teaching someone how to use the law is much more time-intensive, it's much more personal, certainly when it comes to the writing, than it is to simply say, "Go learn and memorize."

When I see writing from students that starts off by telling me all of the elements of all of the law, I realize that immediately that person's painted themselves into a corner. They're not going to be able to tell the examiners all of the elements of all of the law on all of the subjects on all of the questions on every part of the exam. By its very definition, the approach is doomed to failure. You say, "Well, why would a bar review then let people do that?" The answer is that a bar review, a big one, knows that their pass rate isn't going to change very much no matter what they do, so they take the path of least resistance, and the path of least resistance is simply to tell students to memorize. If you want to be outside of that norm, that group of people that fail in fairly large numbers in most jurisdictions, then one of the fastest ways to do it is to stop memorizing and start using what you know.

Throughout this series, I've talked about a variety of things that help you learn how to use the law for the particular context of the test that you're in. You study differently for the multi-state than for an essay or a performance test because the skills that are being tested are different in each part of the exam. If you study with a purpose and you study with an idea of what skill is really being measured, then you step outside of that broad group of people, some of whom will pass but many of whom will not, who are simply memorizing and reciting. Every exam, I have people that come to me that have taken one of the big mega bar reviews, and they've worked very hard and they failed the test. They say, "But I worked so hard, I memorized so much." It's heartbreaking to see that happen.

You see, it's just the wrong skill. It's not what's being tested. That's why it's myth number one, because it takes up so much time and energy of an applicant. You put so much work into it, you get those flash cards out and you write down all those notes, and you just work on mnemonics until you can barely stand up, and then you find out that nobody really cares. That's a heartbreak and it shouldn't happen. As I wrap up this series on the great myths of the bar review, I guess I would tell you that this is the one you've got to really be careful of. It's the one that can come back and bite you the hardest in terms of wasting your study time. You don't need to do it, and if you stop and really think about it, you'll recognize that at its core, the very logic of the idea of memorization just doesn't make any sense.

Well, I hope that this series has been useful. I've enjoyed going through it, I've enjoyed your comments and feedback. As always, I wish you the very best on your bar exam, and I look forward to hearing from you with your successes. Thanks for joining me.

