

Jackson:

Hey everybody. Welcome to episode 134 of the Extra Mile Podcast for bar exam takers. This is your host Jackson Mumey. Really honored that you'd be spending time with me today. I hope that things are going well for you where ever you might be. As this episode is being released, we're in the middle of the February 2017 bar exams so we obviously want to be sending our best wishes and thoughts taking the test this week. We hope that that process is going well for all of you. In future episodes of the Podcast, we will be sharing with you the feedback we got from students around the country as they came back from their exams. Make sure you stick around for that information over the next few weeks.

I assume that many of you that are listening to today's episode are planning on taking the bar exam either in July of 2017 or maybe some time in 2018. If so, that's great. We're glad to have you with us today. I want to invite all of you to join me for a special live training this Thursday, February 23rd at 3:00pm Eastern, that would be 12:00 noon Pacific time. The title of our training is How To Make The Next Bar Exam Your Last Bar Exam. It's a look at the four powerful steps to passing the bar, guaranteed. It's a powerful and useful opportunity for you to follow through the steps that we use in preparing people to pass their bar exams. It's totally free, but you do have to register. To register you go to CelebrationBarReview.com. Click on the button that you'll see on the page there and join us on Thursday at 3:00pm.

If that date and time don't work for you, you can schedule your own on demand version of the webinar. Scroll down a little bit further on the page and you'll see that link. The only difference is that I won't be there to answer your questions live in the on demand version, but beyond those two same information and same opportunities. I really hope you'll take some time and join us for one of these two presentations because they really can make a huge difference in your preparation and study for the bar exam.

I was trying to think about what I wanted to talk about in today's episode. With people in the exam for the last few weeks we've been focusing on the things that you have to do right at the end to prepare for the test. Those episodes, I got tremendous response. Thank you all so very much for listening and sharing those episodes with your friends. Now we're changing gears for awhile. We've got this little period of time in which people will come back from the bar exam, but we won't have results yet. This is an interesting time in the bar review and the bar exam cycle because we do know that many people have started their studies, or will be starting their studies, for the next exam, the July 2017 exam. I wanted to speak to those of you in that situation probably most directly today.

Over the next few weeks, as I said, we'll be sharing some information as people come back from the February test. As results start to come out, typically in mid April, we'll be sharing stories and case studies of people who were successful on

their bar exam. We've certainly got a lot ahead for you. Today I thought what I would do would be to take a moment to do a reflection on 50 different bar exams. I'm not going to take you through 50 exams, but what I mean by that is that I started my career teaching the bar exam before the July 1992 bar exam. That means the July 2017 exam will represent my 50th bar exam of being a bar review teacher. That's a really long time and it's a lot of exams. I'd like to think that over the years I've learned something through all those experiences.

I was trying to figure out how many people I have worked with and I literally don't know. I got to believe at this point in my life, it's literally tens of thousands of people. When it's that many exams over that many years, frankly it's easy to lose track.

Before I was starting to teach the bar, I was involved with the bar review for a few years before that. This is only officially my 50th bar teaching, but more than 50 that I've been involved with. That got me to thinking about the history of the bar exam a little bit. As I thought about reflecting on 50 bar exams, one of the first things I went back to do was to do a brief research on the history of the bar exam. I think it's kind of interesting. I hope you'll indulge me for a moment, and let me share some interesting information.

The very first bar exam in the United States was a non-written, it was an oral test. It was given Delaware and it was in 1738. That was the way that the bar exam was handled for 123 years. The next change that in the bar exam came in 1855 with the introduction of the first written bar exam in the Commonwealth of Massachusetts. It took 123 years for the first change in bar exams to occur. There was another big gap after that first written exam in Massachusetts, it was 117 years after that in 1972 that the first Multistate Bar Exam was introduced by the National Conference of Bar Examiners. That's significant for our purposes because that's the genesis of the test that you'll all be taking in July of 2017 or later. The very first MB was given in 1972. We had this 117 year gap. You can see it took a long time for change to happen.

Change came quickly after that though. In just eight years later, the very first Professional Responsibility Exam was created, the MPRE. Eight years after that, in 1988, the first Multistate Essay Exam was written. Nine years after that was the first Multistate Performance Test. In just a few years, we had the introduction of four new tests. The Multistate Bar, the Professional Responsibility Exam, the essay exam, and the performance test. Then in 2011 was the first Uniformed Bar Exam. That's the combination of all of those tests together. It was only offered in a couple of states. Today the UBE will be offered in over 23 jurisdictions and states. Well on its way to being offered in more than half of the jurisdictions in the country. In six years, the UBE has gone from a very tiny exam to the dominant player in the field.

Why do I share those dates with you? Some people may think I was around for all of them. I think it's interesting because when I came to bar review in the late

1980s, I was very privileged to work for a man by the name of Walter McLaughlin. Walter McLaughlin was the M in SMH. Some of you that have been around for many years will remember the SMH bar review was actually the second biggest bar review in its day. It was the second big box of its era. You know the first big box, they're still around. Back in those days, McLaughlin along with Smith and Hart, two other Harvard Law professors, had created a course to specifically prepare Massachusetts students for that first Multistate Bar Exam in 1972. By the time I started working with and for Walter, we were already nearly 20 years into the Multistate Bar Exam. One of the interesting things that Smith, McLaughlin, and Hart had recognized early on was that the Multistate Bar Exam was based more on principles of law than on actual rote memorization.

That was a revolutionary idea back in its day. It's still a revolutionary idea today. It was very different in approach from what everyone else was doing in bar review, which was simply: Memorize, recite, practice on the test, do lots of questions, get lots of information, and do an information dump. What these three Harvard professors figured out was that you could take the test and analyze it more scientifically, more rationally, and figure out what was being tested and prepare for what was being tested instead of just the pure information. That was the beginning of Smith, McLaughlin, and Hart's own bar review, SMH. As I say, that's where I came into the picture in the late 1980s. SMH went on to be a very prominent player, not just in Massachusetts, but around the country. When I started my career teaching it was with them.

One of the interesting things that happened back in those days is that bar reviews were done in a very traditional structure. Almost like a law school class. Students would come for a six or seven week period, typically after they had finished law school. They would sit in a room and there would be local professors who had been hired by the bar reviews to come in and teach their subjects. One of the interesting things that I discovered very early on was that these professors who were expert in their own subjects, were totally knowledgeable about the topic, but completely illiterate about the bar exam. In fact, many of them had not even taken a bar exam or forgotten that they had done so. The quality of lecturing was pretty erratic. Sometimes it would go on and on for hours and hours with no discernible value to the students taking the bar. This was the way that it was done.

Students would come every day and they'd listen to a lecture. The professors would travel a circuit from one exam site to the next. That was the nature of it. The student would get that material, they would go home at night. They try to measure it and work with it. They come back the next day, and hear a new professor and start all over again. That might sound familiar to many of you because that's still what some bar reviews do today. Sometimes they use technology and you'll get a video of that professor, but it's still the same basic idea.

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The other thing that was interesting back in the day was the way that materials were being produced. Now because of the difficulty of printing new materials and the cost and expense of doing it, what the large bar reviews did back in the, frankly, 1970s up until about 2000 was that they essentially had one set of materials and two sets of covers. This was an interesting concept.

Basically, what was going on is that there was the Red Book and the Blue Book. For July, you put on the red covers on the books and you printed out a bunch of them, and then for February, you put on the blue covers on the books. It was really exactly the same books, same material, but a different cover. You put on a new date, and you printed the new books and sent them out. Nothing really changed.

The bar review books that were being used in the 2000s were not very different than the ones being used in 1972. Candidly, if you were to look at today's bar review books that are being used by some of the big companies, you would find a lot of language that's verbatim taken from those early books back in the '70s and '80s. Very little changed, but they changed the covers, so people thought they were getting a new book and, therefore, were less inclined to sell or trade off or use those books. In fact, they even had book deposits at one time so that you could get the books back from the students.

The logistics of how the course was done was all built on what worked for the bar review. None of it was built on good teaching. There was no interaction with the teacher. There was no feedback on work. There was very little in the way of essay-writing. When the performance tests were introduced, there was virtually nothing around performance test-taking. There were very few actual questions in the courses, which gave rise to companies like PMBR, which no longer exists exclusively.

That was a company that did nothing but prepare students on the Multistate by having, as it turned out, illegally copied questions from the National Conference of Bar Examiners and creating their own course of Multistate questions. That was their undoing eventually. The idea was that there was very little built in the idea of practice in those early courses, so it was essentially an information dump. Students came; they had information dumped on them on all of the subjects that were being tested. Then they were really on their own to practice and prepare and get ready for the exam.

Obviously, things changed, and the rate of change came even faster. When I was thinking about the change in the bar review and the bar exam and the rate of change, it reminded me of a book I recently photo-read. It's Thomas Friedman's Thank You for Being Late. Now Thomas Friedman is an award-winning author and columnist for The New York Times, and this newest book of his, Thank You for

Being Late, looks at what he calls this notion of dynamic stability. Kind of like riding a bicycle. If you're sitting on a bicycle and not moving, you're going to tip over, but once you get some momentum, some movement, you can then keep your balance. It's dynamic stability, and the faster you go to a certain point, the better you are at keeping your balance.

There was a rate of adaptation that was happening in the bar exam world that was not keeping up with the rate of change in the law profession generally, and there was a disconnect. The disconnect was that once people were actually practicing law, they weren't doing the tasks of memorization and recitation. Things like Lexis and WestLaw had come along. The information retrieval was making it possible and accessible for people to be in the practice of law without having to be able to memorize and recite law.

In that process, it began a shift in the thinking of the bar examiners. No longer were attorneys in practice saying, "We need more people that can memorize and recite, that will simply be ciphers of whatever information they're given. We actually need people who can think, who can add value with their judgment and their ability to analyze the problems of our clients." Those things were harder to test for, and so the examiners began to move away from this basic written test that had been around for a very long time; 1855 is certainly a long time ago on testing, 117 years until the first Multistate Bar Exam.

The Multistate Bar Exam by itself wasn't enough, and so that's why it only took a few more years to add the first essay exams. Once that began to happen, it was a reflection that the examiners were trying to mirror what was going on in real life. That's why the performance tests were added a few years later. Literally, in a period of 31 years, the bar examiners made more changes to the bar than they had made in the previous 240 years combined. Pretty big change.

Not only were there big changes, but they were happening rapidly, and along the way, bar review had to change as well. Now some courses changed and adapted; others did not. At Celebration Bar Review, we were on the forefront of cutting edge of a lot of things. We were the very first course to provide home study. It didn't make much sense to us that people had to go to a classroom and sit someplace, and we recognized that a lot of non-traditional students were appearing in the marketplace who didn't have the ability to study exclusively for six weeks. They had children at home or work interests or they were traveling or whatever it might have been, and so we created the very first home-study course 50 bar exams ago.

Now back when we started that, we were the first course to put our lectures on audio cassettes. I know, most of you are saying, "What's an audio cassette?" It was this old plastic piece of tape that you had and you had to reproduce and duplicate them. We had thousands and thousands of those cassette tapes that we sent out every exam. That got to be old in a hurry, but we did it for many years.

Then along came Apple with its first classic iPod, and we were the very first bar review to put our lectures in a digital form on the iPod. We literally bought iPods, shipped the iPods to our students. They would use them and return the iPods to us after the exam. That was quite a deal. I used to be the most popular guy on the block with the FedEx guy. He'd come with stacks, literally 50 at a time, of iPods for us to load up and send out. After iPods, we were the first course to put our materials on an Apple iPad, back in iPad Generation 1, all the way up through the iPad Pro today.

We were also the first course to put our materials fully and totally online for streaming. Now, obviously, this wasn't popular until technology and the cloud had gotten a whole lot better, but we were the very first people to put lectures and digital books and questions all in one spot where you could access them 24 hours a day from any Internet-capable device, and that was quite an experience. In the early, early days of doing that, we literally had computer servers in our offices with the old T1 lines, and we were the very first people to put T1 lines into some of the office parts that we were in, just to be able to handle that work from our students, where people from around the world could get on the Internet, dial up, and actually literally be online and do their studying.

Then we were the very first course to add levels of mentoring. One of the things that we recognized fairly early on was that in a home-study environment, students needed to have contact, but in any study environment, they really needed to have some way to stay in touch with a teacher. They needed some evaluation and feedback on their work, and that people had different levels of needs.

Not everyone needed the same level of service, and so we offered, instead of one-size-fits-all, a series of different mentoring options at different price points to allow students to get the material and the assistance that they needed. Oh, yeah, we also learned how to print on demand so that we didn't have to do the different-cover game, and our materials could stay much more frequently updated and current both in digital and in print form.

All of those things were innovations that I'm very proud of, and we continue to innovate at Celebration Bar Review in our use of neurolinguistic programming and photo-reading and paraliminals in mindset and the use of spaced repetition as a learning strategy in our approach to success-based learning. All of those are things that we talk about in the webinar, and I again invite you to join us on Thursday for that webinar. We're going to talk about a lot of those things and why they're important in when you study.

What I wanted to share with you today was that all of that came out of a basic understanding that the bar exam was changing and that it was not sufficient any longer to teach people the way Abraham Lincoln taught and graded when he was part of the Illinois Bar way back when. That was essentially the same model

that was being used up through really the last few years, and the big-box bar reviews have not modified or adapted what they do very much from that point.

If you've been through one of their courses recently, you know this. You go to a classroom, you sit there, you watch a lecture. You leave, you go home at night, you study that material. You come back the next day and you do it all over again. There's no mentoring, there's no feedback. You're all on the same schedule at the same time. That's really ignoring the way rate of change and the change that exists.

I think some people would have said, "Well, that's okay. What difference does it make? If everybody's passing, it's a good system." That was a good system until a few years ago when it became clear that not everybody was passing. I've talked about this in other episodes of the podcast, notably when I talked about the idea of the emperor has no clothes. There's been a shift over the last few years from a majority of bar-takers passing the bar to a majority of ...

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Bar takers. Repeaters and first time takers. We now have a majority of people taking the bar exam who fail. Now, a majority of bar takers still use the Bigbox bar reviews. I think there's a correlation, and I think there's causation there, because our experience has been that a majority of people that we work with pass the bar. Even though we tend to work with a lot of repeat bar takers, we still do better than the overall numbers. We think that that's because we approach the exam differently, and we use different tools. When you're using the old tools from the old days, you're going to get results that, increasingly, are becoming suspect at best.

What's happened is, that in the change from a different kind of bar exam and a different kind of bar review, some people got left behind. What does that mean? Today, I think that when you look at the bar, you see that the examiners continue to add new subjects. We had a seventh multi-state subject added just a couple of years ago, after many years of being at six subjects only. You see that there are new skills being tested. The bar questions, particularly the uniform bar exam questions, are not any longer trying to drill down on elements and rules. They're much more interested in fact patterns to help discern whether or not you have the proper judgment and can do the correct analysis using the law as you understand it. There are more direct questions in the sense of, "Here's a conflict or a dispute, how would you resolve this dispute? Much less, tell us the elements of negligence or formation of a contract." That change is subtle, but significant because when you're learning nothing but the elements, you're missing out on this critical component of judgment and analysis. Particularly in essays, and it's hurting the scores for a lot of people.

Then you look to see that there are tests like the multi-state performance test, which has become something that when it started it was an oddity, a rarity, and now it's expanded to over 20 states. Even California, which started with a three hour performance test, is now returning to a 90 minute performance test, the

multi-state performance test as well. The purpose of the performance test is very clearly to demonstrate in a real life setting, the kind of work that a lawyer would have to do. It requires no law memory at all, because the library, the materials are given to you in the package itself. Literally, the examiners are saying, "We do not want you to memorize and recite. You don't need to brief the cases in the library, we want you to use the cases in the library and use the statutes to help resolve the problem we've created for you in the file."

You can see that there are definite things going on in the exam. What's happened is, is that this idea of moving from rote memory to analytics really changes the world. It changes the way that the test is given, and it should change the way you prepare for the test.

Now there's one other big change that I haven't talked about, but it's important to mention. That is that there's a change in the way bar exams are scored. I don't just mean the physical scoring, the numbers that you get, although those numbers are changing as well. Sometimes higher, sometimes lower, it's an interesting movement across the country. We're coming to more and more of a uniform scoring through the uniform bar exam. But I want to point out a lesser understood change. That is, "Who's grading your bar exams?" There was a time back in the 1970's and the '80's, when bar exams were graded exclusively by professionals who were bar examiners. Sometimes in the bigger states they employed some law school professors, and occasionally some judges, and very rarely but occasionally some senior associates in successful law firms in that jurisdiction.

Those days are long gone. Today, most of the scoring for the bar exam is done by what I would call, "gig employees." These are people who are hired on a part time basis, given instructions on how to grade a specific set of answers to a specific question, and then they're doing a weekend's worth of work, typically for about \$1,000, or \$3.25 per essay book in California, for example. These people are members of the bar, but they are not academics. They don't even have to have been people who passed the bar in their first try. They're literally people who are either underemployed, or unemployed, and want to make some extra money, so they got to side hustle scoring bar exam essays and performance tests a couple of times a year.

Now that's a very different kind of reader and grader than we had in the bar exam in years past. It's a person who's genuinely less interested, less focused, and less capable and competent than what you might have been thinking about the person who was reading your essays. Certainly, if you're thinking that your bar exam is going to look like a law school exam, well hopefully I've said enough already to make you realize that's probably not true. It's not a kindly law professor, or even a mean law professor grading your answers anymore. It's not someone who's been spending 18 or 36 weeks in class with you and expects you to recite back everything that they've told you during that period of time. It is a completely different world, with a completely different grader, and a

completely different set of criteria. That's shocking to a lot of bar takers today, because they assume that what they did in law school would work on the bar exam, but they're two very different skills, and two very different environments.

Here's one quick example of that. A lot of older attorneys who are re-taking the bar, or are moving some place and taking the bar exam, come to me and say that they intend to hand write their essays and performance tests. This is a disaster of major proportions. Why? Well beyond the fact that you can't hand write as much as you can type and you can't organize your answer as well, it's really a function of who's reading the answer. You know, back in the old days, everyone hand wrote so everyone was used to reading handwriting and grading that way. Then as computer and laptops became an option on the bar exam, it was adopted very quickly. The bar examiners made this option available and people scooped it up. Applicants jumped all over it. Well now today, instead of having a majority of bar takers hand writing, it's a very small minority who hand write and the graders are not used to seeing handwriting. It slows them down, it confuses them, it looks like the writer is either old, or poor, or disorganized, or not professional, or not interested. None of which is really a very good impression to leave with the reader. Even if you are the slowest one finger or two finger typist in the world, you are better typing than you are hand writing. Isn't that weird? Those are the kinds of changes and things that happen as the bar exam changes itself.

There's a lot going on in the bar. There's a rapid change happening, and the rate of change is happening faster. Faster than I think a lot of bar takers have been able to adapt, and certainly faster than a lot of bar reviews have been willing to adapt. As you consider preparing for the upcoming exams, I want to suggest that you take a step back, take a deep breath, and ask yourself, "Do I want to prepare for this new form bar exam with all of its components and information in an old style way?" If that's your choice, that's okay. I think if you actually think about it, and you're not persuaded or blinded by all of the swag, and junk, and gifts that you got in law school, and all of the hype that you hear about being the biggest is the best, then I think you really would stop and say, "Well that doesn't make much sense." It's really not a very good way to learn.

I have to tell you that I hear virtually every week, multiple times a week, people who say, "I took one of the Bigbox courses and I couldn't believe how awful the experience was." I rarely hear, though I occasionally hear it, but I rarely hear somebody say, "It was a great experience. They did everything I wanted them to do." I just don't hear that very much. Yet when I talk to our students, consistently they point out how much more connected they felt. How much more personalized, how much more focused their work was, how much better they got in every aspect of their studies because they were studying for the actual test they were going to be taking instead of a test from 100 years ago. I think that that makes all the difference as you consider the approach that you want to take to studying for the bar exam. Look, if you want to sit in the Bigbox bar review because they gave you a course and your best friend is a 1L, told you

that this was the thing to do, even though both of you have no idea what the bar exam was back then.

You want to do that, go for it. Here's the reality. Statistically, most of the people that do that will fail. The vast majority right now of bar takers in the country fail the bar exam. I think you got to stop and ask yourself, "Why is that happening?" Is it because the vast majority of bar takers are stupid? I don't think so. Is it because they don't work hard enough? I know that's not so. Is it because the test is unfair? Well, I don't think that's the case, although I understand that there's a feeling about that. I actually think it's because they prepare in a way that's completely unacceptable and unresponsive to the actual exams that they're going to be taking. In a rate, and in a world of rapid change and rapidly accelerating change, I don't think you can afford to be left behind by doing something that's so remotely old fashioned for a test that's clearly changing over time.

I hope I've given you something to think about, there. At least a little bit of though provoking information as we start this transition period into looking up the upcoming exams. Again, I appreciate everybody being with us today and being followers of this podcast. If this is your first time with me, welcome. So glad that you spent this period of time on this episode. If you'd like to hear more about these episodes, you can find all of them on our website at CelebrationBarReview.com. Just click on the link for podcasts. You'll see the show notes and the episodes from back in episode number one, and you can subscribe and get these podcasts. Once a week we come out on late Tuesday night, early Wednesday morning, and you can subscribe in Apple iTunes, or on iHeart Radio, or wherever you subscribe to podcasts. With that, I just want to thank all of you for being with me today. Best wishes to everybody that came back from their February 2017 exam. If you're listening to this after the exam, we hope it was a good test for you. We'll be back next week and start talking about the feedback from that last exam. For now, say goodbye and hope to see all of you very soon on the pass list.