

Jackson Mumey: Hi, and welcome to Celebration Bar Review. We are on myth number two in our top ten countdown, and as you can imagine, these are pretty big sacred cows, if you will, in the bar exam and the bar review world. In today's discussion, I want to talk about one of those things that most of you are going to absolutely swear must be true and that's why it's such a big myth, and that's the following: When you get the instruction, don't repeat to facts. I think most bar takers would say that's absolutely right. You don't want to use those facts. Don't repeat the facts. The examiners don't want to see the facts. Don't use facts. Nothing could be further from the truth.

The examiners who say, "Don't repeat the facts", really mean don't repeat them verbatim. Don't write out the entire question before you begin to write your answer. That's not the same as not using the facts. I want to take the bulk of this discussion to talk about why it's important to write about the facts and why indeed I teach my students to write about the facts first. The root cause of this discussion really comes from the science of how the brain works and how we learn and how we take information in and process it. You see, the brain doesn't know the difference between fact and fantasy. That's why when you go to the movies, you laugh or you cry. It's not real. It's a digital projection up on the screen, but to our brains it looks real and so we have all the same responses as though it were a real event happening in realtime in front of us.

One of the things that we know about how the brain works comes to us through the idea of a functional MRI. For a long time we assumed that there were parts of the brain that had different responsibilities, different areas of focus if you will. There is a part of the brain that is primarily responsible for memorization. One of the interesting things in studies that have been done over the last few years is that test subjects are given a list to read or some items to look at for a few minutes and then they're put into this functional MRI machine, and they're asked recite what they've just read, in other words, to bring back what they've memorized. Now, what the functional MRI shows is that one part of the brain in the cortex lights up enormously. It's like hyperventilating. It's very bright. The reality is that part of the brain is taking a good deal of oxygen to do it's work. The synaptic responses are jumping like crazy.

Now, that creates in test takers, who are trying to memorize rather than using facts, it creates this interesting phenomenon of falling a sleep while they're sitting up. In other words, they've been in a test and they say I don't know what happened for the last twenty or thirty or forty-five minutes. The time just went by, and I didn't remember anything happening. It's because the brain is drawing off so much oxygen to that part that is required to do the memorization that it's actually depriving other parts of the brain of the oxygen that's necessary to retain conscious alertness, if you will.

Now, what's interesting is that these test researches began to work with other subjects, and they then instead of giving them something to memorize actually gave them a fact pattern, a real problem or a made up problem. They then showed them some pictures, and they created a visceral emotional reaction to

the problem. Then they put the subjects back into the functional MRI, and they asked the subjects a series of questions about how to resolve the problem. Well, when they mapped the brain at that point, they found a very different pattern. Instead of the memorization centers of the brain lighting up almost exclusively, now they found a much more even distribution of brain activity throughout the entire centers of the brain. It was much more like a Christmas tree being lit up throughout rather than a flashlight or a spotlight in one place.

What scientists theorize is happening is that at that point the test subject is actually using more capacity. They're using their intuition, their logic. They're using their common sense. They're using their problem solving skills. Yes, they're using their memory. They're using all of that much more effectively and much more cooperatively than when they're just trying to memorize. Okay. With that background here's why writing about the facts is so important.

When you go into an essay exam if you begin by writing about the facts, yes, you're helping the reader a little bit by establishing context for what going to come, but you're mostly helping yourself as the writer. Because when you start to write about the facts, your brain gets tricked into believing that it's a real problem. You see, if you get a hypo and all you do is start reciting and memorizing elements of law, to your brain this is a, "I'm going to take a break. The memory functions will work. The rest of us are going to go sip a cold one."

When the problem is put in the context of facts, when you have to write about the facts, you're now telling your brain, "Look this is real. We've got a real problem that needs a resolution." Now your brain begins to get engaged in the problem. Functional MRI's show that the brain is lighting up throughout all the centers not just one spot. As you write about the facts, it now becomes easier to start to make arguments, to use what you know. Now, what you know should be the law. If you've done your work in your bar review and your studies, you should know some law, but you should also have some common sense, some practical experience, some life experience, some sense and intuition of what the right outcome might be.

As your brain begins to work through that problem, you're able to create arguments. As you create arguments, the law that's necessary to support those arguments is much easier to bring out because you're not just trying to bring up the memory in abstract or without context. When someone says to you don't use the facts or don't repeat the facts, what they're really doing is saying shut down most of your brain activity and simply go to the part of your brain that memorizes and recites. Now let me ask you this if you were actually in the practice of law, whether you were a litigator or a transactional attorney or mediator or whatever you're doing, doesn't it make sense to you that part of your tasks is to help solve your client's problems?

It's not just to recite the law back to them or to memorize it. Gosh, they can go on the internet and get that information. Your job is to be a counselor, it's to be

an advisor, it's to help resolve a problem. When you're doing that, you're actually using all of your brain, some of which will be certainly what you know about the law, but also filling in gaps where you may not know it and you would hypothesize what it might be. That's precisely the skill that the bar examiners are interested in when they give you an essay question. It's not whether or not you can memorize and recite. It's whether or not you can solve problems through your knowledge and use of the law.

When someone says don't repeat the facts, they're really doing you an enormous disservice. Because if you don't use the facts, you're essentially shutting down your brain's capacity to see this as a real visceral problem. I often suggest to my students that they visualize the parties in the hypo actually sitting in their office talking to them engaged in a dialogue, a conversation, an argument if you will, about what's going on. The more effectively you can visualize that, the more effectively you'll be able to engage your brain in the idea that this is a real test, a real problem, that needs a real resolution.

Writing about the facts is really nothing other than a prelude to being able to write about the law. Now, in our course we talk about that in a great deal of detail, and we show you exactly how to do it. I've seen this work in every exam in every jurisdiction that we prepare students for. I take a lot of heat for this. There're a lot of people that say, "Oh, that guy he just wants to do fact stuff. He just writes about the facts." Well, the interesting thing about the facts is they're always in front of you. They're a great place to start. They're a terrific way to get your motor running, if you will.

When you get that mental motor running, it's much easier then to move to what people think of as a bar exam test, which is a discussion of the law. You see, I think if you don't use the facts, you're never going to get to that point. It's going to be very dangerous and very difficult for you. I think that one of the most dangerous myths that there is about the bar exam is the myth of don't repeat the facts. I think the reality here is you have to use the facts, use them all the time, use them as deeply as you need to to get yourself into the problem and to be able to solve the problem by showing the law that you know. It's really just that simple.

Well, as always I welcome your comments and questions. Feel free to contact me on our website [celebrationbarreview.com](http://celebrationbarreview.com), or you can call us toll free 1-800-840-6929 or e-mail me [jackson@celebrationbarreview.com](mailto:jackson@celebrationbarreview.com). I hope that this myth is a helpful explanation for you. The next time we're going to finish up with number one on our top ten countdown of the myths about the bar exam. Thanks very much for watching and have a great study week.