

Announcer: Welcome to The Extra Mile Podcast for Bar Exam Takers. There are no traffic jams along the Extra Mile when you're studying for your bar exam. Now your host, Jackson Mumey, owner of the Celebration Bar Review.

Jackson Mumey: Well, hey, everybody. Welcome to Episode 47 of The Extra Mile Podcast for Bar Exam Takers. This is Jackson Mumey and I'm really pleased that you're with me today. We've got I think what will be, I know it is, a controversial discussion today. This is a video I made a few years ago in our series about shifts in the bar exam and I called it, "Common Sense Versus IRAC Writing," and wow. It is controversial. This is probably the one that just makes what I describe as the flat-earth defenders go absolutely nuts. We'll talk a little bit more about it here in just a minute.

I do want to thank you for coming alongside and giving a few minutes of your day to find out more about the bar exam and what's going on in the bar exam world. If you'd like to subscribe to this podcast, you could do so on iTunes or by going to CelebrationBarReview.com, clicking on the podcast link at the top where you'll see not only this episode and the show notes, but all the prior episodes as well, and you can subscribe from there. I really encourage you to do that. I'd also love to get your ratings and honest reviews just to help guide me in what you like in this series. We do these episodes twice a week, so really pleased about that and very excited about the growth in our subscriber base and download base. That tells me that there are a lot of you out there who are in fact listening and I hear from you and I appreciate that a great deal.

I also want to let you know we'll be doing our weekly master class called, "How to Make the Next Bar Exam Your Last Bar Exam." These are the steps that passing bar takers absolutely have to know. It's on Thursday at 3pm Eastern. It lasts for 90 minutes and during this 90-minute master class, I'll be walking you through the step-by-step process that passing bar takers use based on my experience of over 25 years now. This is a totally free class, but we do try to keep the registration limited so that we can provide the kind of interaction that people seem to like in this discussion. There are a couple ways you can register for your free seat. One of them is to just text the phrase, "NEXTBAREXAM", text that to 33444. The other way you can register is to go to CelebrationBarReview.com/webinar. That's CelebrationBarReview.com/webinar and reserve your seat for Thursday's class. Again, it's 3pm Eastern, 12 noon Pacific, about 90 minutes and I think it will be well worth your while if you've not participated in this class.

Turning to what today's topic, how to write a bar exam essay is a big deal and there are no shortage of methods and approaches that are available and in this particular lecture, I describe the history of where IRAC, issue, rule, application, conclusion, how that writing actually came to be, why it worked in law school, but doesn't work for the bar exam particularly well. I'm going to give you some examples so that you can get a sense of who uses IRAC writing and who doesn't maybe more to the point. Then I'm going to talk about a better writing style. A style that in my experience gets better results empirically on the bar exam, but

also makes more sense and is more of what an attorney does in the actual practice of law.

Now, if you're someone who has been using the issue-spotting issue, rule, application, conclusion approach on the bar exam, this is going to be a tough one for you to hear because it's really going to go to the heart of some things that you probably hold to be pretty dear, pretty sacred, pretty much undeniably true, but I think you're going to find, if you listen with an open mind, that there's plenty of room to believe that they're not really good ideas and they don't work well.

I'll also talk about why the big bar reviews, the big box companies, continue to promote IRAC as a writing style and I'll indicate to you and show you why you want to break away from the herd, specifically on this. There's one company that says, "The bar exam is graded on a curve. This is why you take our course." Yeah, and your course is getting a 35% pass rate or lower. I don't think that's the part of the curve most people want to be on.

I really encourage you to listen to this, even if you really believe strongly in your heart that you have to be an issue spotter on the bar exam. I think you might be surprised. We're going to talk about that in our master class as well in great depth, but I thought today would be a good time to talk about that because a lot of you are just starting to really dig in to your bar studies for February and probably starting to write some essays. I think you'll find this to be an interesting discussion. Let's just jump right into it and talk about "Common Sense Versus IRAC Writing".

Hi, and welcome to Celebration Bar Review. I've been doing a series of videos recently that I've entitled, "Shifts in the Bar Exam". Looking at different paradigm or modeling or framing shifts that I think you need to make to be successful on the exam. As I'm recording today, we've begun the season in which results start to get published in the jurisdictions that we prepare students for and so, inevitably, I get a fair number of emails and phone calls from people that did not take our course, but failed the bar exam and want to talk about what makes our course different and what kinds of shifts in their thinking might be appropriate.

The one sort of common theme that I tend to get a lot of has to do with writing styles. Now, if you've watched any of my other videos on YouTube or other places, you know that I don't use the traditional IRAC writing style. You may also be aware, if you're one of those people that goes online and Googles or Bings your way through the world, that my not doing so makes me a target for what I call sort of the "flat-earth defenders". In other words, they are a group of people who are really heavily invested in IRAC writing. I don't know why because typically they are people who, by their own admission, have failed the bar exam multiple times, not with our course, but somehow find it necessary to

defend the faith, if you will, in IRAC writing and think that what I'm doing is just the most awful, terrible thing.

Interestingly enough, the hundreds, probably thousands of testimonials that we have on our website from people who've used our system successfully, you would think that kind of outweighs the five or ten loud screamers out there, but I understand how the world works. In any event, I thought I'd take this message and talk a little bit about the background of what I call "common sense writing versus IRAC writing" and try to give you a better insight as to why I think that's a necessary shift.

If you don't know what IRAC writing is, this message will make no sense to you at all. I'm not talking about the country. I'm talking about the concept of writing, a writing style IRAC for issue, rule, application, conclusion. See? I know what it means. Many of you learned that system in law school and some of you used it in applying and writing for the bar exam. Some with success, many without success. I don't use that particular writing style. Instead, I teach a writing style, for many years now, that I would best describe as being "common sense," built on making arguments and using the law to support those arguments. Not relying on memorization or recitation. Not relying on this sort of abstract idea of issue spotting, whatever that means.

In our experience, empirically, that has resulted in much higher pass rates than the state average in every single jurisdiction that we teach and have done so for more than a decade. I know that it works and it works well and so I'm always a little puzzled when I get sort of this visceral response, particularly from people who failed using IRAC writing somewhere else, why they're so staunchly defending it or wanting to stay with it.

I've said in other places and it's not unique to me that the classic definition of insanity is to do the same thing over and over again and expect a different result. People who IRAC write and fail the bar exam and IRAC write and fail the bar exam and IRAC write and fail the bar exam and then wonder why they keep failing the bar exam doing the same thing really meet that classic definition.

Let me give you a little bit of background about where IRAC writing came from and why it really doesn't make a lot of sense. First thing you have to understand, I think, is the broader perspective of what the study of law in the United States has evolved from or evolved into. If we go back to the founding of the country, most of the lawyers in the early United States were trained as apprentices. A handful went to only one or two law schools. Most of them went to Harvard Law School.

If we look, for example, at one of the famous Harvard lawyers from the early days of this country it would be John Adams. We have a lot of John Adams' writings. Not just his personal writing, but his legal writing and his brief writing and so on. If we look at that writing, there is nothing in there that would suggest

IRAC. Not a bit. There's never a point in which you see him saying, "The issue is, the rule is, the application, the conclusion." That's not the way he wrote. He wrote typically for his time. He was a plainspoken individual, though he was prone to flights of linguistic fancy, but he did not IRAC write. He was trained at Harvard Law School.

In general, if we look through the writing for the first 100 years of the United States, you do not see IRAC writing typically found anywhere. Jump ahead to the late 1870's. Abraham Lincoln, another lawyer who becomes president and someone who we have a great deal of his writing available to us to study. If we look at Lincoln's writing and remember that Lincoln trained and apprenticed as a lawyer, the log cabin, the whole story, Lincoln's writing also does not reflect anything like IRAC. He is clearly perceived and understood to be one of the great writers in American history. Certainly one of the great leaders and his writing reflects his approach which was rhetorically extraordinary, but never IRAC. There's a sense of the issue, the rule, the application, or the conclusion. In fact, as we go forward from Lincoln's time into the current time, we continue to see that there is little or no example in the public discourse of public people of IRAC writing. Where did it come from because everyone does it.

You need to understand that about the turn of the century into the early 1900's, there was a massive change taking place in the economy in the United States and in education in the United States. In the economy, Henry Ford and the Model T were taking over and we're moving towards an age of industrial expansion and the factory line approach became the model for good business and good work. The factory line also became the model for a great deal of education in America about that same period of time. In the factory line model there was a great deal of emphasis and weight placed on uniformity, on doing the same thing each and every time with very little deviation. That was designed because the thought was that you could process more people through school faster if you taught them all the same thing, just as you could process more Model T's faster on the assembly line.

Up until that point, the practice and study of law had been treated more as a profession, as an art, as a calling. It began to shift, however, in the early 1900's into more of a profession or a technical trade. As a result, as part of the technical trade, it became necessary to have a more uniform teaching method and so the first year set of classes became a sort of a uniform and standardized across the curriculum in every school.

Again, in the early 1900's, the number of law schools in the United States was still relatively small and most of the people teaching law in those schools, either had a direct or an indirect connection to the Harvard Law School. In the late 1800's, in the Harvard Law School, the decision had been made as part of the standardization process, to start teaching a writing method that we now call IRAC. It was a way in which it could be relatively, easily expressed to a law

student to prepare a way of writing and communicating that would be relatively easy to look at and grade and work with and to proceed from there.

As those early Harvard Law graduates learned IRAC, they became the next generation of law teachers or professors and they taught IRAC. Without going to my Kunta Kinte roots, they begat and they begat and they begat, and by the mid-1900's, IRAC writing was the norm in law schools. That process really sort of reached its zenith, I think, around 1970, '75, which was about the same time that the multi-state bar exam reared its pretty head and the general view of bar exams and bar examiners across the country where each exam was different was that we needed some degree of standardization, something that made everything sort of fit together. The multi-state bar exam was born. In that environment, the IRAC writing style made some sense because it was uniform and everyone did the same thing and that's the way that people started taking bar exams in the 1970's.

Into that environment came a couple of large companies to provide bar review and you know one of them today. I mean BARBRI's out there and Kaplan PMBR now is the other big one, and between the two of them they control probably well over 90% of the bar takers in the country. If you've taken their courses or are familiar with them, you know that they both teach IRAC writing and so you might be inclined to say, "Well, see that's why I should do IRAC." Well, not really.

You see, what happened was that they made a conscious decision, certainly the people at BARBRI and I think the folks at Kaplan just sort of followed along for the ride, but the BARBRI folks I think made a conscious decision that they were going to be the pass rate in every state no matter what they did. If they told people to use IRAC writing, they'd still get 35% of the bar takers in California to pass and 50% in New York and 60% in Florida, whatever those numbers might be. If they told all bar takers to write in Greek and to write from backwards to forwards and to use hieroglyphics, they'd still get 35% passing in California, 50% in New York, 60% in Florida. See, it wouldn't really matter what they did.

Given that environment, I think they made the rational choice which was don't try and stop the snowball. If IRAC writing is what people have learned, let them continue to use IRAC writing. It won't change any result that would dramatically affect their pass rate. That makes sense except that IRAC writing really isn't very good writing. I often challenge people who tell me about IRAC writing, "Show me an example of someone in the practice of law that actually IRACs in writing briefs or memos or letters to clients or letters to opposing counsel or anything of the sort."

You already know the answer to that question. It doesn't happen. No one uses IRAC writing in practice. It's an artifact of this Harvard Law School experience in the late 1800's. Nonetheless, because the big bar reviews teach it the presumption is, "I have to do the same thing or I'm not going to pass," but that's

exactly the inverse of what the presumption should be. If the big bar reviews told you to write in gibberish, 60% would still pass, but you don't want to be part of the gibberish group, do you? I don't think so. Instead, we teach a writing style that's designed to be reader-friendly, that is well-organized, that's disciplined, that uses the law, and doesn't ask you to memorize and recite it. That lets you get into the heart of the problem and write about disputes.

Is there anything in what I've just described that sounds controversial to you? I don't think so. It's really what happens in common sense and everyday legal work and everyday legal writing and how the bar examiners react to it. They love it. That's why our students pass at dramatically higher rates than the state rate, which by extension is the rate of Kaplan and PMBR and BARBRI and whatever. As a result, when you write in this style, you immediately separate yourself from that mass group that's just sort of lemming-like, doing the same thing. As a result, you know have the ability to have your work evaluated and seen and viewed in a much more favorable light. Empirically, it's a better way to write.

I come back to my original question. Why in the world would the flat-earth providers, and by "flat earth" I simply mean the people that say the Earth is flat and today we now know the Earth is not flat, why would anyone defend such a silly notion? Why would anyone defend IRAC writing? I think that there are people who are invested in that. Maybe they're campus reps for their bar review or maybe they're so invested in the thought that that's the only way they can pass. That it's so threatening to think there's a different way to do something, a better way to do it, that they then become hostile to that notion. You don't need to be hostile to it and you don't need to be a flat-earth thinker. You can actually look at it for yourself.

If you read what the bar examiners say in every jurisdiction about what they're looking for in the written work, it is never IRAC writing. Never, ever. It's never, "Recite the rule." It's never, "Tell us the issue." It's always, "Use the facts. Make arguments. Show us how you resolve the problem." That's what the writing style that we teach uses.

For now almost 15 years, we've had a better pass rate across the board in every jurisdiction because our students start with that advantage. They're outside of that group of people who are just following the herd doing the same old thing with no real application or reason. You see, if you stop and think about what IRAC writing really does, it simply hides you. It puts you in the big body of people who are just doing blah-blah-blah work. You really need to stand out in some way to pass the bar exam.

If that's intriguing to you, if you'd like to know more about it, I invite you to call me or email me. Be glad to discuss that with you. Invite you to watch some of the other videos you'll see here about the writing style. Most importantly, I invite you to join us in the course and find out for yourself why this writing style

is so successful even if it makes some people totally crazy. That's our shift for this week. Take care and we'll be back soon with the next message in this series.

Well, that wraps up today's episode. Thanks so much for listening. If you'd like to be part of our Extra Mile for Bar Exam Takers private Facebook group, just check the show notes. You'll find a link in which you can request an invitation and we'll see you along the Extra Mile.

Announcer:

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