

Speaker 1: 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, and now, your host Jackson Mumey, owner of the Celebration Bar Review.

Jackson Mumey: Well hey everyone. Welcome to Celebration Bar Review and to the Extra Mile Podcast for Bar Exam Takers. This is Jackson. Today we are bringing you episode 56 of our podcast series. It's a follow up to episode 55, in which I talked about the first of our episodes or series on the truth about the bar exam. We focused on what the bar examiners are really doing. If you haven't listened to that episode, I really encourage you to do that before you listen to this particular episode, because what I'm going to be doing today is talking about how you can respond to those trends and changes in what the bar examiners are doing. I'm going to reference obviously those changes, but only briefly and I think it'll make more sense to you if you listen to episode 55. You can find it on our website at celebrationbarreview.com. Just click on the podcast link. You'll see all of our past episodes, in fact, along with show notes.

If you haven't subscribed yet, we'd love to have you join us. We do these episodes twice a week and would love to have you as part of our audience and I thank you all for being part of the audience. It continues to grow with every episode actually, which is pretty amazing to me. I also want to let you know before I dive into our content today or the meat of what I want to talk about, that on Thursday I'll be doing a free live master class called How to Make the Next Bar Exam Your Last Bar Exam. This is a program in which we dig into the four steps that passing bar takers need to know. We've had well over a thousand people go through this course. The response has been terrific and I invite you to join us. There's no charge. It's at 3:00 eastern time, 12 noon pacific time and you can register by going to celebrationbarreview.com. When you get to our website you'll see a button that says claim my free seat. Just click on that. Give us your email information so we can get you registered and then we'll see you on Thursday. I think you'll find it to be a really useful and helpful 90 minute session.

Well, let's turn to this topic that we've been started. I'm going to be talking for awhile about the truth about the bar exam. I thought a good place to start was talking about what the examiners are really doing. I identified 5 things that I thought that they were doing and then a couple of things that I thought that they weren't doing that most people think about. What I'm going to do is go back through those 5 items now. In today's episode I want to talk, at least in brief, about what I think you as a bar taker should be doing in response to these particular items. You know, we've covered some of them in more detail in other places. I'm sure I'll come back to some of these ideas again later in the series, but I thought this was a good overview for you today.

Well, the first thing that I said about what the bar examiners are really doing these days is that in my view, based on 25 years of experience in the bar exam teaching, and watching, and being part of the profession, that it seems to me that what the examiners around the country are doing, is that they are

protecting the legal profession, the trade industry and not necessarily the public. I pointed out that one of the things that's happening is that we're seeing a real distinct limitation on the number of passing applicants in virtually every jurisdiction. We simply have a problem of too many applicants for too few legal jobs. In response to that the examiners are protecting the profession in the way that the bar exam is being written, and graded, and managed.

Now, you've probably heard and I discussed in episode 55 the narrative of the exam getting harder. We'll talk more about that in a moment, but in general, I don't think that that's necessarily what's going on. I think that the response to this paradigm change of protecting the profession, not necessarily the public, is really by thinking for a moment about what it is that the profession of law is looking for with new attorneys. It seems to me that when you talk to people who actually practice law and you ask them about new members of the bar, the things that they're most concerned about are not really someone throwing a shingle outside their door and taking away business from a big law firm. That's not really the problem. I think what they're concerned more about is the reality that it slows down the entire judicial system when you have people who don't understand how to practice law. When they don't know how to write proper complaints and briefs. When they don't understand how to conduct depositions or trials.

In essence, the concept of judicial economy really comes to the forefront. I think the bar examiners, to their credit and maybe to their defense a little bit, are also aware of this problem of judicial economy. As a result, they are not looking for new members of the bar who are issue spotting, word spotting, prolific, crazy, go over the top on everything kinds of individuals. They simply aren't. I think what they're really looking for, and what I've seen them reward in every jurisdiction is, concise, clear writing. Justified argumentation followed by the proper application of the law to the argument that's being made. They're not looking for people who can recite elements of law or memorize the law. This is really mythology and I've talked about it in a lot of our podcast episodes and on YouTube and I'll link to a few of those in the show notes.

In essence, I think that if you're going to respond to this idea of protecting the profession it means that you need to prepare and take the bar exam as if you're an attorney and not a law student. It's two very different sets of skills and it's critical that you respond appropriately to the exam by doing the things that would indicate that you will understand and be able to practice law, and not just be a memorization animal, if you will. That's the first thing. I think you've got to be aware from the very beginning of what skill is being set up. Now, the second thing that I said, that it thought the bar examiners were doing, is that they were cutting costs in the administration of the bar exam. I pointed out that if you had a lower than passing MBE score, in some jurisdictions they don't read your essays at all. In others, like California, they marginally read them, but basically they give you the gentleman's 50 or 55.

What's the response to that? Well, I think the obvious response is that in virtually in every jurisdiction you need to give adequate attention to your multi-state bar exam scoring and to your preparation. The reality is that if you write great essays, but you do poor or horribly on the multi state, you're not likely to pass in most of the major jurisdictions. Here, I'm talking about California, New York, Florida, Texas, Georgia, New Jersey. The uniform bar exam in all of those situations, it's been my experience that a poor multi-state score is rarely offset with an outstanding essay score because in many jurisdictions now they're just not reading your essays all that carefully. I don't think you can afford to simply ignore or fluff off the multi-state in favor of preparing for your essays or your performance tests. That's the first thing.

I said that in terms of cutting costs, I thought that the examiners were trying to hire bar graders who were not really academics. They're not law school professors. They're not even partners or associates at law firms. They're typically unemployed members of the bar. Often people who failed the bar exam previously to passing. What does that mean for you as a writer? Does it mean that you should pander to them, or treat them without respect, or try and play games like underlying lots of legal terms of art using excessive headlines and so on. I don't think so. I think good writing is still the key and good writing in our opinion is really characterized as being unselfish writing.

It's thinking about your reader more than you're thinking about yourself. It's using clear organization. A consistent writing pattern. It means not jumping all over the board with issue spotting, but really setting up a structure in which you demonstrate that you understand the arguments and the law and how they law applies to those arguments, and then doing that repeatedly. It means typing in most cases rather than hand writing because the examiners simply aren't used to reading hand written essays. It means using an outline format, so it's easier for the reader to follow what you're doing and being consistent with that. Not writing 2 paragraphs and then 7. Not going on stream of consciousness discussions. Not trying to throw out every rule and tool that you've got using a predetermined outline or checklist. Those things are hallmarks of selfish writing. Not unselfish writing. I think when you've got graders who are only getting 3 dollars and 10 cents an essay to read, you want to be as unselfish as you can be to recognize that you are writing to a very specific audience.

Now, I also said that the examiners were cutting cost by repeating the use of multiple choice questions. Where those existed on the exams and where there are essays narrowing the call of the question from things like, discuss all issues, or talk about everything, to very specific and identifiable call of the question. Well, to me the responses to those 2 cost cutting measures are to use a competent bar review course. In the jurisdictions that repeat their questions, a course like Celebration Bar Review and others, we've seen those questions over and over again. We've got a pretty good handle on the kinds of questions that you're going to see in Texas, or New York, or Florida. If you're using a competent course you probably will be prepared for those repeat questions, and you don't

want to over study them. There's not a need to do that, but you should be prepared for them. As far as the narrower call of essay questions, I think the answer here is, you don't issue spot. You don't memorize the law and recite all the elements. You don't use the checklist form of writing.

Instead what you do is, you respond to the actual call of the question. You provide the answers that you're required and asked to give. I think that the people who approach bar essay, like they did a law school exam, a final exam, are missing the point. In law school exams you don't necessarily have narrow calls of the question because the professor's testing their own material. Here, the bar examiners are giving a body of material out and asking a group of hired outside graders to review the answers. They've got to keep those calls of the question narrow and definable. When you as a writer ignore that and go way beyond the boundaries. If you go out of bounds on the answer, if you will, it doesn't work to your benefit. I think those are all things that you want to be aware of in terms of cost cutting measures that the bar examiners are taking.

Well, the third thing I said that I thought the examiners were doing, is that they were standardizing and going to more mass produced kinds of tests. I talked about the growth of the uniform bar exam, the multi-state performance test, the changes even in testing formats in states like California in 2017. In the last couple of years Texas has changed their exam. New York is changing theirs. What's the response to that? Well frankly, I don't think it's a bad idea to forum shop just a little bit here. If you don't have to take the bar exam in a specific state, that is to say if it doesn't really matter to you where you're taking the exam, I would look around and look at a UBE jurisdiction or a state that's got a shorter form of the exam. I think in doing that you're giving yourself a better opportunity to be successful.

For example, if you're in the northeast and you've got a choice between taking the Massachusetts bar exam or the New Hampshire UBE, the New Hampshire UBE is a very much simpler straight forward exam with a much higher pass rate. Is there a big difference between being licensed in New Hampshire or being licensed in Massachusetts? Well, it depends on the kind of work you're trying to do, but in some cases it makes no difference at all. If it doesn't make a difference I would look very carefully at those UBE jurisdictions. Now, some people have said, well should I wait for the new UBE in New York or wait for the shorter form test in California? I don't know that that's necessary. We continue to have success in all of those jurisdictions as they're presently conformed, but I think that if again, if it doesn't really matter to you when you take the exam or where you take it, then yeah I would certainly look at those as possibilities. I don't think it's a bad strategy to at least think critically about where you're going to take the exam.

Now, if you've gone to an unaccredited law school and you only have a certain number of choices or you're a foreign trained attorney and you've only got a certain number of choices, then you've only got a certain number of choices,

but be an informed consumer. These rules are changing all the time. One quick example is that foreign trained attorneys for a long time were only permitted to take the exams of New York, California, and Texas. Then, Georgia added a provision for foreign trained attorneys who completed an LLM program. You want to be up to date on those things if you're a foreign trained attorney and you can check out our website at celebrationbarreview.com/foreign for information and updates on that.

Well, the fourth thing that I said that I thought the examiners were doing is they were putting ethics front and center on the exam. Now, that sounds like a contradiction to item number 1, where I said they were protecting the profession and not the public. I think the focus on ethics is in fact a public relations effort on the part of most bar associations, but it's a real one none the less, so you would just be silly to not prepare for ethics in your jurisdiction. Again, this doesn't mean that you are giving the most ethical answer, it means that you understand the model rules or the state rules where they're different in your jurisdiction and prepare to see that on essay questions. In virtually every jurisdiction that we prepare for ethics is not testable in some form. It's certainly part of the performance test in every jurisdiction. It's a subject that you've got to be prepared for. Don't just throw it off as something you're going to do in the last day or two before the exam with a quick once over. It requires more preparation than that.

Then, number 5 on my list of things that I thought the bar examiners were doing is, I said that they're weeding out the uncommitted. If you're not all in, they're going to blow you out. They're simply making the exam too difficult. The response to this is really simple, but not easy. I think you've got to be prepared to invest both money, and time in your bar preparation. You're going to have to put in time to study. You're going to have to put in time to prepare your character and fitness and application. You're going to have to put in the time to travel in some cases to the bar exam site, and to be there for a few days. You're going to have to spend money for all of those things I just mentioned. You also need to invest in a competent bar review. I continue to be stunned at the people that tell me that they absolutely have to pass the bar, but they can't come up with 100 dollars a month to study for the bar exam. That is outrageous and I think the bar examiners simply are saying, if you don't have the commitment to really prepare properly, we don't think that you're somebody we want in the bar and go back to item number 1, we're protecting the profession. You're an easy one to weed out.

You just won't pass the bar with a week or two of cramming. You won't pass the bar by studying on the weekends when it's convenient to you. You won't pass the bar by just giving it kind of a halfhearted attempt because it's what you do. You just go back and take the bar over and over again. This is not an easy one to say to people. I'm going to link to a short video I made a while ago about investment and investing in a bar review course, but the reality is that if you're not prepared to invest both your money and your time, and your energy, you're

not likely to be successful right now. If you can't bring yourself to make those investments, then I think that's a pretty clear indication that it's not the right time for you to sit for the bar exam.

You know, I understand that there's lots of people out there who are struggling financially, but I honestly don't believe that there's anyone who's in such a position that having graduated law school, being in the position to take the bar, now can't find 3 dollars and 50 cents a day to prepare adequately for the exam. To me that's just a disconnect that doesn't make much sense. Well, I also talked in episode 55 about the things that I thought the bar examiners were not doing. Sort of the mythology that's out there. One of the things I said is that I didn't think the examiners were necessarily making the test harder. They're obviously changing some things about it, but I didn't they're making it harder. I think that the response that you need is to know what's being tested on your exam. What's really being tested on each part of the exam. I don't mean just necessarily substantively, but what skills are being tested? Then, respond to that skill set, so that you're giving the right skills for an essay or for a multiple choice or for performance test. Again, a competent bar review I think can help you do that.

I think it's important to not walk around and study with the illusion that the test is impossibly hard and bar takers are impossible stupid, so therefore you have no chance. That's not an accurate perception. It's a gross generalization and I don't think you need to buy into that narrative, as I said, elsewhere. I also said that I didn't think the examiners were rewarding issue spotting. I talked about that before and talked about it even in this episode. I'll just say that I think you need to use a different writing style than what you used in law school. I think the Iraq writing style is outmoded, outdated, and ineffective. The fact that the big major bar review companies still teach it and have pass rates in big jurisdictions of 30 and 35 percent is a pretty clear indication that it's not really all it's cracked up to be.

Before you get really excited about defending it to your last breath, I would just do a little bit of research and I think you'll discover no one in the practice of law issue spots. The big bar reviews that teach it don't have stellar results with it and the primary reason that people issue spot is because they don't know any better, but once you've been exposed to something better, I think most people would say yeah there's a more appropriate way to write for the bar and one that's more consistent with what you'll do after you pass the bar which is the skill the examiners are really looking for.

I also said the bar examiners were not going to fill in missing pieces for you. They weren't going to fill in the gap. It wasn't a forgiving audience, if you will. Again, I would say you want to use a different writing style. One that's comprehensive and complete, rather than one that just throws out lots of rules and then asks the reader to make connections or connect the dots. We teach a style that really shows the reader step by step how you think through the

process. I think that's the type of writing style that you want to use. I also said the examiners were not giving you model answers that you could use. I went into some details to why that is so, but I would simply say that what you want again is a competent bar review that shows you how to write answers. If all you're doing is pulling old model answers or released answers from the bar examiners you're going down the primrose path. You're not going to be successful doing that. That's not the purpose of those questions. That's not why they were produced or released. It's a misuse of that particular resource.

Don't presume that because the examiners release an answer is what you should be doing. It's really far from that. Again, more detail in the previous episode. Then lastly, I said the examiners are not testing the latest changes in the law. What we suggest and encourage, and in fact what our students do is to focus on the underlying principals of the law. These are the things that don't change. That aren't subject to whether or not you got 5 votes on a US supreme court for a particular rule or change. You want to be, again, focused on the basic core ideas and principals in every subject. If you spend your time hunting down all the latest advance sheets in your state or federal jurisdiction you're going to find that you wasted a lot of time and energy for no purpose at all. The exams that are going to be given in 2016 have already been written and they are in the printers and in the safe deposit boxes already. The rules and laws that change in the upcoming year are not going to be part of your exam and you don't need to waste your time talking about that or worrying about it.

Well, that's a very quick look at a lot of items. I could probably do a complete episode on virtually everything that I talked about here individually, but I wanted to give you a sense that there is a way that you could respond to these changes in what the bar examiners are doing. I think it's important to recognize that you are not a victim here. You don't have to be victimized by these changes. You can take positive and appropriate steps to study and be successful in view of the things that are going on. Now, we'll be continuing this series. Moving on to talk about the truth about the bar exam. We're going to look at some other subjects, including pass rates, a very popular one. We're going to look at the truth about how bar review companies operate. Not because anyone actual cares. I'm not trying to play inside baseball, but I do think it's insightful to help you understand why you might have bought into some mythology that's not really accurate.

What we're going to continue to be doing is really advocating for you as a bar taker. I hope you find this useful. I'd love to get your comments and reactions. You can email me at jackson@celebrationbarreview.com. You can also join our private Facebook group called The Extra Mile for Bar Exam Takers. There's a link in the show notes where you can ask and request your invitation. Love your comments there about these podcast episodes as well. Look forward to sharing some more ideas with you over the upcoming few episodes and weeks as we dig a little bit deeper into the truths about the bar exam. Well, thanks everybody for being with me today. 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 the show notes. You'll find a link in which you can request an invitation and we'll see you along the extra mile.

Speaker 1:

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