

# The National Law Journal

## Op-Ed: Like Father Like Son, Bar-Exam Ritual Is a Necessity of the Profession

Law school taught them how to think like lawyers; exam prep taught them the law.

*Peter Kalis and Michael Kalis*

May 11, 2015

We are survivors. Separated by 34 years, we stared down the furies and passed the bar exam. To distinguish between our experiences, we'll resort to a device used by those 18th century Steeler fans, the Pitt boys, and refer to ourselves as the Elder and the Younger.

In the summer of 1980, the Elder took the Pennsylvania bar exam in Pittsburgh. He might as well have picked a fight with Steelers lineman Mean Joe Greene. He staggered out of the test location and sat on the curb of a busy street. His life passed before his eyes with the traffic. Why hadn't he studied more?

In the summer of 2014, the Younger took the Texas bar exam in Dallas. He left the test center breathless. A bison might have been sitting on his chest as he struggled to fall asleep that night. Those convoluted test questions were impenetrable. They swirled through his mind like a psychedelic haze. Why had he even bothered to study?

Both the Elder and the Younger were stunned when they heard the news that they had passed the bar exam. A cautious swagger soon replaced their unsteady gaits, friends filled their mugs and a good time was had by all. The revelry continued until a thunderbolt hit each of them: After three years of law school and near-death experiences with bar examiners, neither had the slightest idea about how to practice law.

Both the Elder and the Younger were fortunate to find jobs with law firms for which the mentoring of young lawyers was and is a calling. Even with the active mentoring, however, time passed before the Elder could be trusted to operate without supervision in complex areas of law. As a first-year associate, the Younger is in the early stages of this process.

Across three decades and 1,000 miles, the experiences of both have left them with a clear view of the bar exam and has rendered its critics a little off-key. Because of the intense pressure surrounding the bar exam, it's not unreasonably viewed as a gating event. After all, the bar exam is how you get your union card.

In reality, however, the bar exam is part of a much longer process on the way to becoming a lawyer. The critics need to get out of an "event" frame of mind and into a "process" frame of mind.

So what is this process? Among other things, law is a language art, and the language of choice is English. The process therefore begins much earlier than law school and involves mastering English. We're not talking about emulating Keats, who at 26 was the greatest poet in the English language — and dead. We're talking about communications skills and the ability to appreciate and employ nuance in language. Proficiency at English is the true gating item for a career in law in the United States.

There follows the customary trajectory through college and on to law school. Who learns legal rules in law school? If you step back and analyze the experience, law school is and should be an immersion in legal reasoning — how to think like a lawyer. Along the way, somebody named Mansfield or Hand or Cardozo might teach you a rule or two, but clearly the point is more how they arrived at the rule than it is the rule itself, which of course can change at any time and from jurisdiction to jurisdiction.

Yet you have to know at least some legal rules, right? Clients and employers will expect that of you. So who teaches you legal rules? If anyone, it's the people who prepare you for the bar exam: the much reviled bar review courses and their instructors. Would you want law schools to pound those rules into your heads? They have a more important mission: To teach the reasoning of *Hadley v. Baxendale* or *Palsgraf*. The rules themselves can be taught off flash cards.

## PROCESS-ORIENTED APPROACH

The proposed reforms to the bar exam — some of which focus on turning law school as well as the bar exam into an experiment in vocationalism — should follow a more process-oriented approach.

Consider Microsoft Corp.'s initiative with the University of Washington School of Law in which diverse law students ("Gregoire Fellows," named after a former governor of Washington) are provided with financial assistance to enable them to take bar review courses, among other items.

This program recognizes that becoming a lawyer is a process, that the bar exam is an important milestone and that the bar review course is a critical element in passing the bar exam.

The Elder and the Younger are still traumatized by their bar exam experiences but have come to appreciate that learning how to operate under enormous pressure with imperfect information is a big part of practicing law. Whatever its shortcomings, the bar exam gets that exactly right.



*Peter Kalis is chairman and global managing partner at K&L Gates. Michael Kalis is an associate at Gruber Hurst Elrod Johansen Hail Shank in Dallas.*