

## **I Laughed, I Cried, I Failed, I Passed: Veni, vidi, velcro, vici\***

I wrote the U.S. bar exams last summer. OK, wrote them the summer before too; failed. Practise law in Canada obviously, and if speak French, figure Spanish is do-able too, so spent two years studying part-time from cassettes and manuals and CD's; elected not to take the two-month private-provider crash course in the U.S. because of what was coming down at home and at office, though did go down to Arizona for two weeks to cram and take a four-day crash course. Wasn't enough. Crashed. Got 393 when needed 410 to pass – pass mark is two-thirds, and over a third fail. I was on the wrong side of that equation.

Though real bummed out, I started back into it January of this year, going through all of my old notes, sending away for fresh materials and CD's, registering for a 6-day prep-course before the real course. Signed up for the two-month crash course, also the 4-day simulated exam (two days exam, two days going over the answers with profs) – working my way up the ice to the tip of the iceberg at the end of the summer: the 2-day 12-hour exam.

The Arizona Bar Exam, which used to be three days – they now cram it into two – is a physical and mental ordeal designed by sadists for the benefit of masochists. It's the Stanley Cup Playoffs of bar exams, where more than a third of those writing get played off the ice – the four toughest U.S. bars are California, New York, Michigan, and Arizona – and the California pass rate has gone as low as 23% in some years.

The physical ordeal: four-hour lectures a day, six days a week, two months straight, with homework from the lectures, reading for the next day, practice exams to be done overnight, practice essays to be written every weekend as well – and the other double bed in my hotel room is so stacked full of reading material that I (and everybody else) acknowledge simply cannot be read. Even if you could physically work 24 hours a day for two months straight you just couldn't read it all. Yet it all sits there, barking, just looking at'cha, like an unexploded landmine.

Plus, I'm away from home. Stuff happening at home. Stuff happening at work. When I show up for the first class, all six hundred people seem to have spent three years forming close study bonds, plus I speak funny and am way balder and older than anybody else. Feel as out-of-place as a tattooed goth in a Gap commercial. My desk mate is Lindsey, born three years after I graduated from law school. I'm an astronaut whose umbilical cord to the mother ship has been severed by a passing asteroid and I'm just starting to drift away. As if to enhance the learning experience, the two-month course is offered at the peak of the desert summer heat: 110-115°F on average. A manhole cover will in fact fry an egg (didn't eat it though). This is no iceberg, it's roast & toast.

A mental ordeal too. The rest of the class have just completed a three-year law degree. Me, I've done my own two-year part-time home-schooling: between making dinner, picking the kids up from swimming, figuring out who's got homework and who's fibbing, cajoling anyone just anyone to put at least some dishes in the dishwasher. And got my day-job too of course. The people in the class all know each other, I'm not sure if I can find my way back to the hotel.

If the profs and their lectures are correct, Law School is a complete hoax: all of Constitutional Law is taught in three mornings of lectures, two full semesters of Torts become eight hours, and Wills & Trusts is done and over with in four. If all of this is true, we could start law school on the cross-Canada Via train in Vancouver and we'd all graduate by the time we got to Halifax, with a happy hour every evening.

The profs, mainly law school professors making extra money to take them & their families away for an expensive end-of-summer-vacation (which I'm paying for) are either hired on the basis of their ability to entertain (but impart little knowledge) or their ability to put to sleep. All speak at a rate that is nearly impossible to follow, never mind write down. One big-ego big-name professor makes a point of talking for three hours straight, on the class-side of the lectern in the middle of the auditorium, without a single note or piece of paper, and without a single bathroom break.

And speaking of bathrooms, while on the way to get coffee with a group of classmates, one asked "who feels so pressured you study with books on your knees while on the can" – all did, him as well, me too. Multi-tasking gone silly. I now read all my O.R.'s one-handed (preferably in the handicap washroom because of that handy shelf).

The lectures at Arizona State University in Phoenix begin amid anticipation, excitement, and light-hearted joviality, that I correctly forecast will conclude in an atmosphere of truculence, outright hostility, and don't-talk-to-me leave-me-alone solipsism.

As the seeming familiarity fades over the course of the two months, in the last couple of weeks before the exam date everyone's on their own, in a last ditch effort to cram any microscopic particle of knowledge into their own un-hinged widely-flung universe. Nobody appears sane. Even the super-happy ones seem to be either in their manic up phase or doing too many chemicals. Some develop a deep throaty loud laugh, like the sound a dog makes just before it throws up. Others look as if they've one child, but put that child in one of those strollers for twins, then run around the mall looking frantic. If I smoked, I'd be chain-smoking. If I drank, I'd be a drunk. Fortunately I do neither.

The pressure U.S. law grads are under is incredible: a \$75-150K US debt load is quite normal. Twice that's semi-normal too. And many states limit how many times you can write – some jurisdictions have a three strikes and you're out policy (Arizona does) – as a result there's a near-subculture of U.S. law grads working in law firms/in-house law departments who've yet to pass a bar exam. Some fail in one state then move next door to try there. I called a classmate the night before day 1 to wish her the best, and she'd decided not to write. Said I hoped to see her next morning. Sleep-deprived and smoked-out (though not smoked-up), she was there. She passed.

I can't figure out why anthropologists aren't tracking and researching our group as part of a human lab: everyone is grinding away in such utter solitude and abject misery that many feel compelled to find solace by studying overnight at Starbucks and living on caffeine: "You can get a lot done during the night, and because the barristas are lonely, they'll fill up your coffee for free". Two guys who study together tell me they "never went to bed before 4 a.m. and got their best work done at night because their heads were clearer" – and of course classes begin at 8:30/9

a.m. Neither passed. Everybody's just about nutzoid, and I'm starting to wonder whether I am too. Or maybe they're all OK and it's me that's losing it. Who knows. Reality, and unreality, merge, at least temporarily. Maybe it's the first phase of Alzheimer's: C.R.A.F.T. disease (can't remember an f'ing thing – and sometimes I can't).

As the exam date draws near, a strange psychological phenomenon emerges: a sense of relief, but coupled with a simultaneous heightened anxiety – like smiling through clenched teeth. The anxiety takes a lot to control: it's not at all comforting to dwell on the approaching 2-day assault course, the sole object of which is to determine whether you were a complete fool to even think of writing that stupid LSAT test 4 years ago, let alone waste basically three months (or in everybody else's case 3 years) stuffing your brain in a desert oven.

Clogged with mnemonic devices, caffeine pills and what I'll politely refer to as non-prescriptive jet fuel, we all move en masse as a kind of disembodied brain into a massive windowless uncarpeted convention-centre conference room – all of us with the same enthusiasm of a post-pubertal canine on it's way to the vet. Or if you're more the cat-type, as nervous as a long-tailed feline in a room full of rocking chairs. Or if you grew up around cows, you feel hustled along like a dawdler in an abattoir cattle chute.

A few years ago in California there was power failure and out of 2,000 people writing, only one person had a flashlight, and he kept on writing. Brought a flashlight with me. So did four others.

The published exam instructions specifically say "No weapons allowed" (I'm not making this up) but the six police officers patrolling the aisles as monitors clearly didn't have to follow those instructions.

How can I possibly describe the 12-hours two days of exams, in the morning and afternoon of both days, where just about every question is so tough as nails you figure you've got to be writing the wrong exam, and at the same time have to keep writing like a crazy fiend – I developed two ganglions in my writing hand (basically carpal tunnel syndrome) by the end of the second day, which I still have six months later. Two people actually fell asleep during the exam, several left after an hour, and when the lights were flickering during a summer thunderstorm on day two I was reaching for that flashlight.

Some observations about whether to/or not, do a U.S. bar exam:

- \$ (after all, Scots are supposed to have a certain fiscal frugality):
  - cost of courses: \$ 3K US
  - application and exam fees: \$ 850 US
  - hotel: \$2.5K US
  - meals: \$1K US
  - airfares: \$3.5K Can.
  - miscellaneous (photocopies, smoothies, gym fees, etc.): \$750 Can.
  - lost client billings: \$100K Can.
  - beer, cigs and other stuff: \$0 (I boringly don't do any).

- Is it worth it? Who knows. I don't.
- Ask your law firm for time off? They might say no, so I followed the Nike ad advice: I just did it.
- Bust your ass at your law firm on files and billings for the first two quarters of the year before you go, and the last quarter when you get back – if you make budget does a Managing Partner really care if you pass a bar or pass out in a bar?
- The application process before you can even start studying is long, complex and time consuming, and may involve a court application (did in my case, as I had to satisfy the Arizona Supreme Court I'd the "substantial equivalent" of an ABA-approved law degree – with four law degrees [you're right, I'm educated beyond my intelligence] I was able to do that).
- Be prepared to list where you've stayed – addresses and references – since age 21 (easy if you're 24, more challenging if you're 52), ditto with regard to all jobs you've ever had, and in addition, all criminal/traffic offences (including moving traffic violations such as speeding tickets [I was Mr. Vanilla with only a single speeding ticket, so I didn't need the extra paper]). If you've done stuff (and you know what I mean) don't apply.
- Good idea to contact a Canadian lawyer who's done the transition. If they say "it's easy, anyone can do it, even you", find someone else who'll talk to you straight.
- Bring a big can of Tim Horton's with you (don't bother if it's decaf).
- Involve your immediate colleagues and immediate family members: it's a good idea to have a practice and a marriage when you come home.

And if you're so brave/foolish (it's a thin line) to do the exam, a few tips and observations:

- Put your other life on hold for 2-3 months, check out of the human race, tell people you're in rehab or you'll go postal (that might assist them in backing off a wee bit), acknowledge to yourself it's gonna feel like going underwater for several years (and you'll probably have the wrinkles to prove it).
- Keep a routine: eat, sleep, exercise; don't eat poutine.
- During breaks in the exam itself, run away from anyone who discusses any of the exam questions; sue them later for intentional infliction of emotional distress (it's a tort in most jurisdictions in the U.S., as you'll learn).
- It's usually two to a table in the exam, so if they reach for their water bottle (allowed), place a protective forearm in front of your exam booklet for when they knock the bottle over and send a water wave in the direction of your "Subsidiarity Principle and the Commerce Clause, Compare and Contrast" completed answer.

- In terms of the exam itself, be aware that "he needed killin'" is not a valid defence to intentional homicide, including in Arizona.
- Bring extra pens and pencils, but don't sit beside anyone that looks as if they've got more than 50 (you don't need Mr. OCD as a buddy on exam day).
- Bring a flashlight – it'll eliminate that particular nightmare in the 12 hours before the exam (don't worry, other nightmares will replace it – the recurring one I had was I got the exam dates mixed up).
- To maintain your personal sense of grace, style and poise, retain a mental picture of the most idiotic, unkept, unexercised lawyer you've ever had a file with (pick Canadian or American, doesn't really matter), with or without underwear (does matter) and equate this into your personal if-he-can-do-it-so-can-I scenario.
- And last, sure you might fail, but if you don't take the shot, you'll never score the goal; and measure the exam against the other more permanent realities of: your health, your family, the last meaningful funeral you went to. If you were listening to your own obituary, would passing/failing really matter? Ultimately it's not that important. And if you think it is, it's only temporarily so.

Two last things: One, went down to Phoenix in December with Giovanna (still got that marriage thing) to get called, and appeared before the Chief Justice of Arizona, The Honourable Charles Jones, in open court. Met him after at a reception – guess where he's from? Lethbridge, Alberta. Born and grew up in Canada, and went to Stanford University, then stayed. Weird, eh? And a good guy too.

Two, when got home, kids (got them as well) wrote me a congrats card. The thing that was most special was what the youngest, Morgan 12, wrote: "Dad, you lost once but then you tried again and you got in. I'm proud of you." I'm way more proud of Morgan for both recognizing and writing that. When I'm 112 and wheeling myself around the Peaceful Lodge Old Farts Home that card'll be taped to the inside of my cribbage locker.

And one final thing: a lawyer down there told me a Bar exam's really like a glorified IQ test: if you pass, no big deal; if you fail, you're an idiot.

I'm both.

#### Addendum

1. Lindsey passed. She's now an attorney in Washington D.C.
  2. Above based on own experience and also riffing with Tom Ryan, Lewis & Roca in Phoenix.
- \* I came, I saw, I stuck with it, I passed.