

## Touro College Jacob D. Fuchsberg Law Center

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From the Selected Works of Suzanne Darrow Kleinhaus

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# Developing a Student's "Thought Monitor"

Suzanne Darrow Kleinhaus



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# Developing a Student's "Thought Monitor"

by Suzanne Darrow-Kleinhaus

## Introduction

Some students find answering multiple choice questions more challenging than writing essay exams; at least there's some leeway with essays. When the questions are multiple choice, you're either right or you're wrong. Because multiple choice questions are such an integral part of the bar exam and have come to figure more prominently in law school exams, students must learn to master them.

Students arrive at the incorrect answer for a number of reasons. The most obvious is that they do not know the law. A superficial or general understanding of a rule is insufficient to distinguish between answer choices. Still, students commit a number of errors that have nothing to do with "knowing the law" and everything to do with answering a question correctly.

- Reading comprehension: Students often misread the question — either the question asked, or the facts in the problem, or both. Sometimes they mischaracterize the facts. These are essentially reading comprehension problems where students do not correctly interpret what they have read.
- Adding facts: Students read into the facts and sometimes add their own which, of course, alters the nature of the problem. Some students do not "add" facts but see implications that have no basis in the facts but which lead them astray in their analysis.
- Failure to identify the issue: Students ignore the specific question they are asked to address in the question stem and then allow all the presented facts in the problem to lead them astray. Since they've failed to identify the "issue" in the problem, they have no means by which to identify the correct answer choice.

It is essential that students learn to detect the errors in their own thinking and reading processes and correct them. I developed a method to help students cultivate this type of self-awareness when I worked with a bar candidate to improve her Multistate Bar Exam performance. She consistently made incorrect answer choices on the MBE yet responded correctly whenever asked a question about the law, so apparently she "knew the rules." I realized that to help her and for her to help herself, we needed to figure out what was leading her astray. We tried an experiment. I asked her to read a sentence and tell me exactly what she thought when she finished reading it. We proceeded sentence by sentence. In this way, I could follow her line of reasoning and detect any flaws — whether she misread a word, made an inappropriate inference, or ignored critical language. I could also tell if something was missing from her analysis.

Happily, this exercise in directed reading led to an immediate improvement in her multiple choice exam taking skills and she passed the bar exam on its next administration.

Once she learned how to monitor what she was thinking, she was in control of the question and not the other way around.

The following is a process you can use to help students cultivate the skill of active reading and self-awareness and thereby improve their exam scores.

## The process

Whether we're conscious of it or not, we engage in an internal, ongoing conversation with ourselves when we read. When I work with students on analyzing multiple choice questions, I play the part of the thought police. It happens simply enough: I give the student a problem and ask her to read it. After a minute, I ask, "what were you thinking when you read this sentence?" And that's how I get inside her head.

What follows is a guide to show students how to do it for themselves. I've addressed it directly to the student so it's as if we were sitting and working together.

Let's get started by reading a real problem. An example from a past MBE will work nicely. This is what to do:

1. Begin by reading the interrogatory and proceed to the fact pattern.
2. As you read, pause after each sentence and write down exactly what you think. Don't stop to censor your thoughts; write them as you have them. To borrow an old phrase, "go with the flow."

*Note: By committing your thoughts to specific words, you are forced to be aware of what you are thinking. This allows you to backtrack and find the errors in your thought process should you select an incorrect answer choice.*

3. After you finish reading the fact pattern, form your own answer in response to the call of the question.
4. Read each of the answer choices and once again write down exactly what you think. Translate your "answer" to fit one of the available answer choices.
5. Now read my thoughts on the problem and compare them to what you've written. Don't expect them to be the same, but your thinking should parallel mine. After all, the same problem should elicit a similar analysis, what I found important, you should have found important, what I questioned, you should have questioned, and how I responded to each of the issues raised in the facts, you should have responded.

## Here's the problem:

Peavey was walking peacefully along a public street when he encountered Dorwin, whom he had never seen before. Without provocation or warning, Dorwin picked up a rock and struck Peavey with it. It was later established that Dorwin was mentally ill and suffered recurrent hallucinations.

*Continued on page 7*

# Thought Monitor

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Continued from page 6

If Peavey asserts a claim against Dorwin based on battery, which of the following, if supported by evidence, will be Dorwin's best defense?

- A. Dorwin did not understand that his act was wrongful.
- B. Dorwin did not desire to cause harm to Peavey.
- C. Dorwin did not know that he was striking a person.
- D. Dorwin thought Peavey was about to attack him.

Here's what I thought as I read this problem, sentence by sentence (my thoughts are in italics in the parentheses):

(First I'll check the interrogatory.) If Peavey asserts a claim against Dorwin based on battery, which of the following, if supported by evidence, will be Dorwin's best defense? (Since a person is bringing the suit and not the state, it's a civil suit and not a criminal case. I'm looking for Dorwin's best defense to battery, so I'd better keep the rule in mind as I go through this: "a battery is the intent to cause a harmful or offensive contact with the person of another." I'll be looking for something that negates an element of battery or possibly self-defense.) Peavey was walking peacefully along a public street when he encountered Dorwin, whom he had never seen before. (Nothing has happened yet, but it may be important that this was a "public" and not a "private" street but maybe not because the question stem tells me that Peavey brought the action against Dorwin in battery so the state is not involved and it's not a constitutional issue. Maybe "peacefully" goes to provocation and since

Peavey never saw Dorwin before, there's no past history between them.)

Without provocation or warning, Dorwin picked up a rock and struck Peavey with it. (Here's the act required for the battery and I was right about the lack of provocation. Now

the issue is one of intent. The facts say that Dorwin "picked up" a rock. This sounds like he acted with purpose. The intent element is satisfied not only when the actor intends harmful or wrongful behavior, but if he acts with purpose or knowledge to a "substantial certainty." Dorwin need not have understood his act to be "wrongful" to have formed the requisite intent: he need only to know what would be the likely consequence of striking Peavey with a rock.) It was later established that Dorwin was mentally ill and suffered recurrent hallucinations.

(On to the answer choices. I'm looking for Dorwin's best defense to battery. I know the act occurred, so any defense will have to negate the intent element or provide for self-defense, which doesn't seem likely since Dorwin wasn't provoked or even knew Peavey.) Choice A: Dorwin did not

understand that his act was wrongful. (This one isn't right because Dorwin doesn't have to understand his act to be wrongful to commit battery; he only has to act with purpose or knowledge to a "substantial certainty." He need only know what would be the likely consequence of hitting Peavey with a rock.) Choice B: Dorwin did not desire to cause harm to Peavey. (This is just a variation of A. Even though a battery is the intentional, harmful or offensive touching of another, Dorwin need not have intended harm to be found liable in battery.) Choice C: Dorwin did not know that he was striking a person. (This sounds funny, but if Dorwin had no idea — no "knowledge" — he was striking a person, then he could not have formed the requisite intent to do the act. This one may be it but I need to read D.) Choice D: Dorwin thought Peavey was about to attack him. (This sounds like self-defense, which is a defense, but there's nothing in the facts to lead Dorwin to believe Peavey was about to attack him. Even assuming Dorwin believed he was about to be attacked and needed to defend himself, this answer choice still admits that he committed the battery. The question asks for the "best" defense and that's one that says he never committed the battery. I'll go with C.)

Choice C is the correct answer.

It probably seems as if it would take a long time to think through this problem, but it really doesn't. Just a couple of minutes. It takes much longer to write it, and for you to read it than it actually takes to do it. That's because what I think as I read is so mechanical it happens automati-

cally. It takes practice, but the process can become automatic for you as well.

I've given you the guidelines and shown you how I go about it. Now you need to practice. I realize it won't be practical to write down your thoughts each time you answer a multiple choice question. But now

that you know what should be going on in your head as you work your way through a problem, your task is to be conscious and deliberate during each step of the process. That way you'll remember what you thought and can go back and revisit it should you arrive at an incorrect answer choice. ***If you make the effort to put your thoughts into some concrete form — even if it's just articulated in your head — you will remember what you thought. Words give form to thoughts. And once there's form, there's something to remember.***

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