

# Lightening and Enlightening Exam Conferences

Richard Henry Seamon

## Introduction

I had only one exam conference as a law student, and it was not good. I requested the conference because I had gotten a disappointing grade on my exam (a B+ in basic income tax). The conference occurred about six weeks after the exam and I had forgotten most of what I learned during the course. I went in cold—without reviewing the test questions or any other material. When the professor showed me what I had written, I recognized my handwriting but none of the content. The professor explained—in Greek, as far as I was concerned—the mistake that caused me to lose the most points. I was uncomprehending; he was defensive. It was a leaden and unenlightening affair for us both.

Exam conferences can be lighter and more enlightening than this. This thesis is deliberately modest. Exam conferences occur under circumstances that make it hard for them to be useful, much less enjoyable, for the participants. Even so, they can help students learn the law, write better exam answers, and avoid discouragement and cynicism. Moreover, they can help faculty teach better, write better exam questions and grade them more fairly and accurately, and avoid discouragement and cynicism. This article suggests ways that exam conferences can maximize these benefits with minimal wear and tear on all concerned.

The article proceeds in three parts. The first part briefly inspects the baggage that exam conferences carry and that causes them typically to be heavy, hindering events. The second part identifies exam conference's potential benefits for students and faculty. The final part suggests ways to maximize these potential benefits while minimizing the costs.<sup>1</sup>

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1. Very little has been written on law school exam conferences. Articles addressing or mentioning the subject include Monroe H. Freedman, *The Professional Responsibility of the Law Professor: Three Neglected Questions*, 39 *Vand. L. Rev.* 275, 282-83 (1986) (discussing exam conferences in a discussion of "Due Process in Grading"); Philip C. Kissam, *Conferring with Students*, 65 *UMKC L. Rev.* 917, 917 (1997) (including exam conferences in an article dealing, more broadly, with "student-faculty conferences that occur in connection with the more traditional kinds of law school teaching"); Steve H. Nickles, *Examining and Grading in American Law Schools*, 30 *Ark. L. Rev.* 411, 437-38 (1976-1977) (mentioning the availability of

### **The Baggage that Exam Conferences Carry**

When I ask students and professors what they think about exam conferences, most respond the same way: they groan. It appears that at most law schools exam conferences are widely but grudgingly available and only reluctantly sought. Most professors do not go out of their way to encourage students to request them and most students do not request them. There seems to be consensus that exam conferences are a necessary evil the benefits of which only modestly outweigh their costs.

This article accepts that apparent consensus, as well as the final exam system within which exam conferences typically occur. Granting conferences' necessity within the existing system, the article explores how to minimize their costs and maximize their benefits. This part considers their costs to law faculty and students; the next part assesses their potential benefits. The biggest costs, of course, are time and energy. A closer examination of how the time and energy are spent will help us figure out how to get the most value for those expenditures.

#### *Faculty Time and Effort*

Faculty spend time and effort before and during exam conferences. Some expenditures are obvious, others less so. The obvious ones arise directly from preparing for and holding the conferences. Before holding any conferences at all, a professor may take time to prepare background material for students, such as a model exam answer or a memo describing common exam mistakes.<sup>2</sup> Once conferences begin, the professor may need time to review each student's exam before that student's conference is scheduled. The conferences themselves take time. Drafting background material, reviewing exams, and holding conferences can take dozens of hours.

Besides taking time, exam conferences take emotional energy. Some of my colleagues dread the week or two during which they hold exam conferences. I believe that is because most professors are sensitive about their grading and most students who request exam conferences are unhappy about their grade. Indeed, they may request the conference for the purpose of expressing their unhappiness or arguing about their grade (or both). No wonder many professors go into conferences spring-loaded for defensiveness.<sup>3</sup>

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exam conferences at law schools surveyed). Most articles on law teacher-law student conferences are about students' legal writing assignments. See, e.g., Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 Val. U. L. Rev. 557, 586-95 (1995); Robin S. Wellford, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. Tex. L. Rev. 255 (2004).

2. See Gerald F. Hess and Steven Friedland, *Techniques for Teaching Law* 287 (Durham, N.C., 1999) (observing that one way of giving students feedback on exam performance is to make available model exam answers).
3. See Kissam, *Conferring with Students*, *supra* note 1, at 925 (observing that exam conferences "can generate defensiveness, even terror" in professors).

In addition to these direct expenditures, less obvious faculty investments of time and effort may occur long before the conferences. Specifically, the prospect of exam conferences may cause a professor to take more time scoring exams. The professor may use the extra time to ensure accurate scoring. The professor may also use the extra time to document the scoring process—for example, by making marginal notes or filling out a scoring sheet for each set of exam answers. This greater attention to accuracy and documentation is prompted by the prospect of having to explain the scores in exam conferences.

If the time and effort described above are well spent, they may have an unfortunate snowball effect. The professor could get a reputation among students as someone who holds exam conferences willingly and makes them useful. This “good” reputation can lead to more of that professor’s students requesting conferences. Even if student demand for conferences with that professor eventually levels off, the professor may end up with a much larger proportion of his or her students requesting exam conferences than colleagues who offer exam conferences only grudgingly and hold them indifferently. The professor’s “good” reputation will seem like punishment. Indeed, a professor who spends a lot of time on exam conferences may get a reputation among colleagues as a chump.

One way to avoid chumpdom and protect one’s time is to offer exam conferences grudgingly and hold them indifferently. I call this the “passive-aggressive” approach to exam conferences. I experienced this approach as a law student and have witnessed it as a law professor. Under an extreme version of the passive-aggressive approach, the professor does not generally announce to students that the professor is willing to hold exam conferences. Instead, the professor tells only those students who ask. The student shows up for a conference cold, without any prior review of his or her exam or any other material. When the student shows up for the exam conference, the professor hands the student his or her exam to review, perhaps in the hallway outside the professor’s office. The student may find that the exam contains only check marks in the margin. (One colleague, however, advised me never to make any marks, because they only raise questions.) When the student returns the exam to the professor, the professor asks the student if he or she has any questions. If not, the conference is over. The professor will have expended very little time or effort; in that sense, the passive-aggressive approach is almost as good as not holding exam conferences at all.

The passive-aggressive approach nonetheless has costs that should cause us to reject it. For one thing, it teaches students not to question our authority. The students who learn this lesson tend to become lawyers who do not question authority, even when doing so may be necessary to promote justice. Furthermore, by preventing students from understanding what they did wrong on the exam, the passive-aggressive approach can cause students to conclude that exam grades are arbitrary and that students have little control over them, conclusions that can cause students to feel stress and lose confidence in themselves and legal education. These costs to our students, their future clients,

and society seem to be largely ignored, perhaps because they are external to any individual professor and don't disadvantage particular law schools.

If we reject the passive-aggressive approach, the question becomes: how else might we hold exam conferences to minimize the time and effort they demand of us? This article addresses that issue after briefly discussing the time and effort that exam conferences demand of our students.

### *Student Time and Effort*

Judged by the clock, students spend less time and effort on exam conferences than their professors. A student cannot have more than four or five exam conferences per semester, one for each course in which they took an exam. In reality, most students have far fewer; indeed, many students go through all three years of law school without ever having an exam conference. In contrast, a professor with large courses may have many exam conferences each semester. In further contrast, students may not prepare much, if at all, for an exam conference; professors usually do some preparation, even if it consists only of digging up the exam and skimming over it. In short, exam conferences cost students little time and effort, compared to what they demand of professors.

This apparent disparity is one reason why some of my colleagues believe that professors should make it hard for students to have conferences. In my view, the disparity is more apparent than real. From my experiences as a law student and a professor, most students dread exam conferences as much as professors do. Many feel deference nigh on intimidation toward their professors and so hesitate to imply by requesting a conference that they question the professor's judgment about their grade. Furthermore, like the rest of us, students hate to revisit personal failure, which is how they regard having a conference about a disappointing exam grade. Granted, not all students are timid about seeking exam conferences, especially if they think they might persuade the professor to change their grade. In my view, discussed further below, the solution is for the professor to make clear to students that the professor almost never changes grades as the result of a conference and will not argue with students about their grades in a conference.

One of my colleagues has relied on the trepidation with which most students approach exam conferences to argue that exam conferences are not good for students and therefore should be discouraged. He believes that as soon as a student finishes a semester's set of exams, the student should forget about them and "move on." In his view, students should focus on their current courses, rather than on exams for already completed courses. To this colleague, the biggest cost to students of having exam conferences is that it distracts them from meeting current law school demands and, more broadly, encourages them unproductively to brood over past disappointments.

I share my colleague's concern about students brooding over disappointing exam grades. The brooding can take many unproductive forms. For example, disappointed students may put all the blame on the professor, convinced, for

example, that the professor wrote a confusing exam or did not test the material emphasized in class. Alternatively or in addition, some students blame themselves by, for example, regretting that they bypassed some study aid or started outlines too late. Students also spend a lot of time worrying about the effect of disappointing grades on their job prospects and their standing among peers. This brooding may reflect realistic concerns, but it does not help students' emotional or professional development.

I disagree, however, with my colleague's belief that exam conferences cause student brooding. Brooding does not stem from exam conferences; it stems from disappointing grades. Students will brood over poor grades whether or not we hold exam conferences. Neither the availability nor actual holding of exam conferences is likely to prolong or deepen the brooding. To the contrary, exam conferences can minimize brooding by encouraging students to stop worrying about their poor exam grades and do something about them—namely, learn how to learn the material effectively and how to write effective exam answers. By encouraging students to learn those things and refusing to argue with them about grades, professors can make exam conferences constructive educational experiences. The educational benefits of exam conferences are discussed in more detail in the next part.

### **The Promise that Exam Conferences Carry**

How do law students and law professors benefit from exam conferences?

#### *Potential Benefits to Students*

Three potential benefits can reasonably be claimed for exam conferences. Two educate students directly; the third educates them by way of example. The third also benefits students emotionally.

First, exam conferences help students learn substantive law. Indeed, exam conferences can target students who had trouble learning the substantive law during the semester. After all, most students request exam conferences because they got disappointing grades, and most disappointing grades at least partly reflect students' failure to understand the material that was tested. These students may benefit greatly from the individualized instruction on points of substantive law that can occur in an exam conference.<sup>4</sup>

This first benefit can be hard to achieve. Students may not be highly motivated to correct substantive errors and fill in substantive gaps after a course is over and grades are received. They may feel that it is too late for additional substantive learning to do them any good. This "too late" feeling can make students resist additional substantive learning. The challenge for professors is to use the "too late" feeling as an opportunity to emphasize that the main goal of students' learning is to become good lawyers, not to ace the exam. By focusing students on the ultimate value of their learning, professors can help

4. See Kissam, *Conferring with Students*, *supra* note 1, at 918 (listing "individualized instruction" among the benefits of student-faculty conferences).

students redeem the time and effort they put into the course by valuing it as part of their future professional knowledge base. In the process, students can put disappointing exam grades into a constructive perspective. This is not easy, and it won't work for every student, but, when it does, students learn substantive law that they otherwise might not have, and do so appreciating the real value of learning substance and of the time and effort they put into that learning.<sup>5</sup>

In addition to the first benefit—helping students learn substantive law—exam conferences can help students learn effective exam taking skills by giving students inside knowledge about the exam-grading process.<sup>6</sup> The inside knowledge comes across in two ways. First, exam conferences help students see their exams through a professor's eyes; thus they learn what the professor was looking for (and awarding points for). Second, they bring this perspective to bear on a set of answers that they themselves probably have never read (despite having written them). When students read their answers informed by the professor's perspective, they often realize that their answers were, in places, incoherent or incomplete. Seeing their own exams in this light can help them take responsibility for disappointing grades—instead of blaming them solely on their professor or on the use of a single final exam as a method of assessment—and be constructively self-conscious when writing future exams. With an understanding of the exam scoring process, students can work backwards toward—they can “reverse engineer”—effective exam writing skills.

Informed by inside knowledge of his or her own exam, students can better understand the generic exam taking tips they get from over-the-counter study aids, weekend seminars, or the exam conference itself. Many of those tips are useful but hard to internalize. For example, one common tip tells students not to waste time simply redescribing the facts presented in the exam question. That is a useful tip, for many students waste time this way. In an exam conference, the professor can show a student where on the exam he or she has merely paraphrased the facts, and explain how the student could have earned additional credit by analyzing the legal significance of each fact, rather than

5. One flaw of basing grades solely or primarily on a final exam is that the exam grade gives students information about what they know and don't know only after it is too late for them to use that information to improve their grade. See Kissam, *Conferring with Students*, *supra* note 1, at 924. I do not intend for students' attention to be diverted from that flaw when I recommend in the text that professors emphasize to students the ultimate value of substantive learning for their practice. Indeed, as discussed in the final section, I believe it is often useful for professors during exam conferences to acknowledge the flaws in the final exam method of assessment. Cf. Adam G. Todd, *Exam Writing as Legal Writing: Teaching and Critiquing Law School Examination Discourse*, 76 *Temp. L. Rev.* 69, 72 (2003) (noting that using time in legal writing courses to teach students how to write effective exam answers “arguably perpetuates and ‘enables’ this flawed component of the legal academy”).
6. Cf. Kissam, *Conferring with Students*, *supra* note 1, at 923-24 (describing knowledge of how to write effective law school exams as “tacit knowledge” that is difficult for professors to explain to students).

simply paraphrasing it. This brings home to the student an exam taking tip that might otherwise remain uselessly generic and abstract.

Third, exam conferences give students some due process, the very thing we teach them to demand for their future clients. Indeed, we teach them to mistrust decisionmaking processes that produce decisions without explanations. We warn them about decisionmaking that takes place behind closed doors. We say that unexplained, unexamined decisions may be arbitrary or influenced by irrelevant (even invidious) factors. Yet we announce our decisions about their performance in most courses by posting a grade determined behind closed doors after students are occupied with other end-of-semester exams and papers or have left town for their winter or summer breaks. Exam conferences spare us some measure of hypocrisy by giving students after-the-fact glimpses into the process for assigning their grades.<sup>7</sup>

I am not arguing that we should hold exam conferences to prevent us from being, and being perceived as, hypocrites. I am arguing that students learn more from our deeds than our words. If we talk the talk of due process in our classrooms but do not walk the walk of due process in our grading, students learn that due process is just talk. That lesson can make them discouraged and cynical about legal education and practice. By the same token, the use of fair procedures in law school exam grading teaches students that we value due process and so should they.

Besides its educational value, exam grading due process has emotional benefits. Academic commentary has described the “dignitary value” of due process.<sup>8</sup> In the exam context, that simply means that students feel valued as individuals when they leave their exam conferences feeling that the exam was graded fairly and their concerns about their grades were listened to sincerely. To have that effect, of course, the grading must be fair, and we must listen to students’ concerns sincerely, even if—indeed, especially if—students express them angrily or less than respectfully. When students leave exam conferences believing that they have been treated fairly, they can better get over disappointing grades and get on with their lives.

This result is not inevitable. For example, exam conferences can reveal the flaws in using a final exam to assess student learning and this revelation can cause students to feel that they were treated unfairly. An examination of those flaws exceeds the scope of this article. As discussed in a later section of this article, my approach is to acknowledge the flaws when it would help the student

7. See Freedman, *The Professional Responsibility of a Law Professor*, *supra* note 1, at 282 (“Our procedures relating to the grading of examinations do not reflect our capacity for error. Most (some?) law professors will discuss students’ exams with them individually. Very few professors, however, are willing, ever, to admit an error and to change the grade. For those of us who teach the value of due process, therefore, another lesson we teach our students is hypocrisy.”).

8. See Jerry Mashaw, *Administrative Due Process: The Quest for a Dignitary Theory*, 61 *B.U. L. Rev.* 885 (1981).

get past a disappointing exam grade. I believe this approach minimizes the risk that exam conferences will breed discouragement and cynicism.<sup>9</sup>

*Potential Benefits to Professors*

Exam conferences can benefit professors in ways that mirror the potential benefits to students. As discussed above, exam conferences can help students learn the material better, perform better on law school exams, and learn the value, and reap the emotional benefits, of receiving due process. Similarly, exam conferences can help professors teach the material better, perform the exam composition and grading processes better, and learn the value and reap the emotional benefits of giving due process to individual students.

Exam conferences can help teachers learn how to teach better by helping them understand why their students didn't understand the material tested on the exam. When grading a student's exam, the professor can identify *what* material the student didn't understand, but not necessarily *why* the student didn't understand it and *how* the professor can teach it more effectively in the future. When the student explains his or her misunderstanding in a conference, the professor can craft ways to clear it up and adapt them for the classroom. Indeed, I have often had the "light bulb go on" for me during an exam conference, when, by trying to explain a challenging concept to an individual student, I struck upon a new way to teach that concept in the classroom. Thus, in the process of helping one student learn the substantive law, I myself have learned how to teach that law more effectively.

The professor may discover that the students understood the material just fine; what they didn't understand was the exam. As with substantive misunderstandings, exam misunderstandings are not always evident on the face of students' exam answers, nor are they solely the students' fault. Exam conferences can reveal unintended and otherwise undetectable ambiguities and vagueness in exam questions. Sometimes these defects arise from wording that the professor would otherwise use on future exams. In that event, exam conferences can improve the professor's exam writing ability.

For example, I included on one administrative law exam the question "What standard of review should the court apply to the agency's determination?" In response to this question, most students not only described the standard of review but also explained the separation-of-powers rationale that Supreme Court precedent used to justify that standard. I gave credit for explanations of the Court's rationale, even though my question did not explicitly require students to explain the rationale. It was only in an exam conference that I realized that my question was most naturally read to call only for a description of the standard of review, and not for an explanation of the rationale for that

9. I recognize, however, that one can reasonably argue that legal education would benefit from the opposite approach—an approach in which we use exam conferences to reveal the flaws in the final exam assessment method and to get students outraged about those flaws—as a way to force law schools to rely less on that method.

standard. The fact that the majority of students “over-answered” the question (and got credit for doing so) did not alter the reality that the minority’s reading was equally, if not more, faithful to the question’s text. Based on this experience, I stopped using *questions* on exams and started giving *instructions* such as “Identify the standard of review and explain the rationale for the standard.” This change, prompted by an exam conference, marked an improvement in my exam writing abilities.

Exam conferences can improve a professor’s ability to score exams. Improvement in the scoring process can occur for two reasons. First, as discussed, the prospect of exam conferences motivates professors to be more accurate in scoring and documenting the process to facilitate explanations of the process. Second, exam conferences put a human face on a process that is otherwise anonymous and dehumanized in most law schools.<sup>10</sup> When we hear how students feel about taking our exams and getting their grades, we should be impelled both to write and to score them carefully.

Seeing the human side of grading also can help professors avoid discouragement and cynicism. Grading exams can be discouraging when it reveals how much less our students know than we thought they did and how, semester after semester, many students fail to learn the most fundamental concepts. It can make us discouraged and cynical about our teaching ability, our students’ learning ability, and the examination process. I believe discouragement and cynicism are easier to transcend—because they become more obviously self-indulgent and harmful to our students—when every semester we meet face-to-face and one-on-one with the individuals who have put so much time, effort, money, faith, and hope into the effectiveness of our teaching and their learning, and who rely so heavily on the fairness and accuracy of the assessment process. Those meetings should force us to improve rather than to give up.

### Methods

This part of the article describes my attempt to minimize the costs of exam conferences while maximizing their benefits as described earlier. First I describe what I do *before* conferences, and then describe what I do *during* conferences.

#### *Before Conferences*

I do not discuss the topic of exam conferences before an exam unless students ask about them, in which case I say only that I do hold exam conferences and that I will provide details after the exam. I fend off pre-exam questions about conferences for two reasons. First, students get anxious whenever I raise any topic connected with the exam. If I am going to cause them exam anxiety, I want to make it worth their while by discussing how they should study for the exam and how to write effective exam answers.

10. See Kissam, *Conferring with Students*, *supra* note 1, at 925 (stating that anonymous exam grading “allows professors to confidently dispense many low or disappointing grades without having to think about the person”).

Second, information about exam conferences does not mean much to most students until after they have gotten their grades and decided that they might be interested in having a conference about it.

After I have graded exams and usually on the same day that grades are posted, I e-mail a post-exam memo to all of the students in the course. The memo describes how I scored the exams and assigned grades based on the scores. It also explains the rules for getting an exam conference, along these lines:

If you would like to find out how your exam was scored, you can come to me, starting on [a date that is typically two weeks after grades are posted], and “check out” (borrow) your exam and the scoring sheet to review. I’ll ask you to return the exam and the scoring sheet to me within 24 hours, unless we agree to a different checkout period. If, after reviewing your exam and the background material on the exam, you have questions about how your exam was scored, we can set up a conference. The purpose of the conference will be to help you identify mistakes or gaps in your substantive knowledge or exam-taking strategies. Please keep in mind, though, that I do not change grades except for clear computational error, and I will have checked your exam for any such errors before I give it to you to review.

My post-exam procedures follow three stages before a conference occurs. First, there is a “cooling off period” before any student can ask to check out his or her exam. Second, after that cooling off period, when a student asks to check out the exam, I review that exam. Third, the student gets the exam to review on his or her own for at least twenty-four hours. The next three subsections describe each stage in a bit more detail.

### The Cooling Off Period

The cooling off period consists of about two weeks between when I post the grades and send out the post-exam memo, and when students can start checking out their exams. The cooling off period serves several purposes.

First, it allows students to work through the emotions caused by getting a disappointing grade. I believe this benefits me and the students. It saves me from dealing with the rawest forms of anger, shame, and fear over bad grades. It saves the student from expressing those emotions in ways that he or she may regret. Most importantly, the cooling off period gives students a chance to reach an emotional state that is conducive to learning. Students under the high stress of strong, negative emotions are not in the best position to learn what, in my view, exam conferences can usefully teach.

The cooling off period gives students time not only to work through their emotions but also to review the background material on the exam before deciding whether they want to check out their exam. The background material, which I post on the internet, includes a copy of the exam; a memo in which I analyze the exam questions and describe how I scored the exam; the scoring sheet for the exam; and a copy of the exam answers written by one of the students who earned an “A.” Some students learn all they need to know from

this background material and therefore do not need to see their exam or have a conference about it.

The cooling off period has drawbacks. For one thing, it hampers my ability to give students emotional support when they probably need it the most, which is right after the sting of discovering they got a disappointing grade. In addition to limiting my access to students who might benefit from my emotional support, the cooling off period probably causes some students who would benefit from exam conferences not to request them. Often, these are students who don't relish the idea of having a conference in the first place and who, once the semester is underway, don't feel they have the time for it. Finally, the cooling off period makes it harder for students to remember the material tested on the exam.

I do things to minimize these drawbacks. Sometimes I send notes to students who got disappointing exam grades, or I stop these students when I see them outside the classroom, to offer emotional support or encourage them to have exam conferences. I try to offset the forgetting that occurs during the cooling off period by providing in the background material a memo that, when analyzing the exam questions, reviews the relevant principles that students might have forgotten. Even so, I have considered shortening or eliminating the cooling off period. In any event, it is not an essential part of my approach. I could get rid of it and still do everything else the same way.

### My Pre-Checkout Review of Student Exams

#### Mechanics and Purposes of Pre-Checkout Exam Review

A student who asks to check out his or her exam will not get it right away. Instead, I usually ask for at least twenty-four hours to produce the exam for the student's review, explaining that first I want to review the exam myself. I review an exam for three reasons before checking it out to a student.

First, I want to make sure I am comfortable with how I have scored it, so I am comfortable explaining my scoring of the exam if the student questions it. Achieving a comfort level does not require me to conclude that I would score it the same way I did initially. To the contrary, I give my initial scoring of the exams a strong presumption of correctness. I will change an exam score as a result of a pre-checkout review only for clear error. These changes seldom alter an exam score by more than a couple of points and thus seldom require me to change a grade. Scores seldom change by more than a couple of points not only because of my strong presumption of the correctness of initial scoring but also because, if I find a clear error that requires me to add points, I study that exam especially closely for clear errors the correction of which requires me to subtract points from the score. Consequently, my pre-checkout review can produce grade changes, but that is neither its usual effect nor its purpose. Its purpose and result is an exam score that I can honestly stand behind."

11. It is arguably unfair for me to change the grade of a student who requests an exam conference without re-scoring exams of students who do not request conferences but whose exams might

A second purpose of my pre-checkout review of a student's exam is to hand-write marginalia on the exam that will help the student understand the scoring. The marginalia supplement the background material on the exam that I post on the internet and the scoring sheet for each exam, a copy of which I supply to every student who checks out his or her exam. My marginalia consist mostly of check marks and short phrases. I use checkmarks to indicate specific places where the student said something that earned points. I use short phrases to identify inaccuracies or omissions in the legal analysis that might not otherwise be obvious to the student or to praise the student for good things in his or her exam answers. Overall, the marginalia provide marginal, individualized assistance to the student in understanding my scoring.

The third purpose of my pre-checkout exam review is to diagnose problems with the exam. As I tell students in the post-exam memo, disappointing exam grades usually result from gaps or inaccuracies in the student's understanding of the material or from test-taking missteps (or both). (Those, at least, are the main factors within students' control.) Thus, I try in my pre-checkout review to assess specifically how a student's exam score reflects substantive and test-taking problems. This assessment gives me a basis for helping the student learn substantive law and exam-taking skills if, after the student has checked out the exam and reviewed it, he or she wants an exam conference.

#### Results and Benefits of My Pre-Checkout Review of Students' Exam

My pre-checkout review of exams that students have requested to see is meant to produce exams that are scored accurately and comprehensibly to the student. The review also prepares me for the conference. Achieving these results takes some time; it takes me about thirty minutes to review an exam. I believe the time is worth it.

My pre-checkout exam review reduces the number of conferences. Most students who check out my exams do not request a conference because, they usually say, their own review of their annotated exam, the scoring sheet, and the background material has told them what they needed to know. Far be it from me to force an exam conference on the student who feels this way!

My pre-checkout exam review makes for more efficient and pleasant exam conferences. A student's review of his or her annotated exam together with the other material minimizes the need for me to explain at the conference how I

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contain clear scoring errors. But see William K. S. Wang, *The Supreme Court's Misplaced Concern with Selective Fairness: Bush v. Gore and Three Analogies to Grading Dilemmas*, 52 *J. Legal Ed.* 272, 274 (2002) (finding this situation fair because, "[w]ith costs and time constraints, only imperfect justice may be attainable," and, "[i]f even one student's grade is more accurate, that is an improvement"). I try to mitigate this arguably unfair situation by automatically re-scoring all exams with scores that fall within two (and, for some courses, within three) points of the next higher grade cut-off. For example, if I have decided to award a grade of "A" to all exams that have scored between 96 and 100 points (where 100 points is the highest score), I will re-score all exams with scores of 94 and 95 points; and, if the point range for "A-" is 90-95 points, I'll re-score all exams with scores of 88 or 89 points, etc.

scored the exam. Usually, students have no more than a handful of questions about the scoring. Many students have no questions about the scoring and only seek advice on how to do better on future exams. In short, I spend most of my exam conferences clearing up stray questions about scoring and giving advice on taking exams. Such conferences are low-stress and, I hope, enlightening.

#### Student Check Out of Exams

After I review a student's exam, I let the student check out the exam, together with the scoring sheet for that exam, for at least twenty-four hours. I tell the student that if she or he has any questions about the scoring or the substance of the exam after reviewing it, we can have a conference. The conference will occur either when he or she returns the exam or, if that is not mutually convenient, at another time soon. I find that three benefits flow from this process.

First, it encourages independent learning. Instead of my explaining to them in a cold exam conference "where they went wrong," students have a chance to figure that out for themselves. This helps them take responsibility for their own performance and, more generally, for their own learning.

Second, the checkout period provides a better opportunity than does a cold exam conference for students to come to terms with, and decide how they want publicly to act upon, the emotions associated with a disappointing exam grades. The checkout period gives students a chance, when faced with the set of exam answers that produced their disappointing grades, to cry and rage in the privacy of their own home, either alone or with a confidant(e). Thus, giving students twenty-four hours alone with their exams gives them the chance to work through their emotions without having to do so in front of the professor.

Third—largely as a result of the first two benefits—the checkout system carries one huge benefit that students and I share. It largely spares us from spending the conference hunched over the student's exam, with me pointing out in painful detail how the student's time-pressured answer came up short. In my view, that process, akin to vivisection, is the main reason exam conferences are such heavy affairs. The process has little potential for enlightenment, for it occurs under stress and time limits that hamper a students' ability to learn. Perhaps paradoxically, I believe that my two-stage process—in which I review the student's exam before providing it to the student for his or her review—gives the professor and the student the time and privacy needed to communicate and learn more effectively than is possible with the more traditional simultaneous poring over of the exam.

Nonetheless, problems can arise from the checkout system. Specifically, I've had one or two students use the checkout period to compose angry and elaborate e-mails arguing about the way I graded their exams. At least one other student used the checkout period to compare his exam to that of a friend who had taken the same exam and previously had an exam conference, a comparison that led him to conclude that I had graded his exam more harshly than his friend's.

Both the flaming e-mail and the perceived double-standard situations involve students who use the exam-review process to argue about their grades. One way to prevent this use is to restrict the students' opportunity to argue. This is the effect of—if not the motivation for—the passive-aggressive approach described earlier. My own approach seeks to limit, not the students' opportunity, but their desire, to argue. I hope to convince students that their exams were graded carefully and fairly. I believe that students who are convinced that I put a lot of thought and care into scoring their exams are disinclined to argue with the scoring, even when they disagree with it in some respects. At the very least, most students are convinced of my good faith, and so, when they have questions or concerns about the scoring, they are not combative about it.

In addition, I tell students in various ways that I will not argue about grades. My post-exam memo makes the point implicitly:

The purpose of the conference will be to help you identify gaps in your substantive knowledge or exam-taking strategies. Please keep in mind, though, that I do not change grades except for clear computational error, and I will have checked your exam for any such errors before I give it to you to review.

The point is only implicit so I do not appear defensive or begrudging about exam conferences. I make the point explicit, however, at the first sign an individual student intends to argue about his or her grade. In making this point, I do not tell the student, "You can't argue about your grade." I say, "I won't argue with you about your grade." I do not want to (as if I could) control the student's actions or desires. Instead, I want to state my unwillingness to turn exam review into an adversary process.

#### *During Conferences*

Other articles offer general advice on holding effective student conferences.<sup>12</sup> Rather than attempt a comprehensive treatment, this section discusses some specific aspects of holding exam conferences under the checkout system that I described above: beginning the conference, conducting conferences in which students have questions about the scoring of their exam or questions about exam-taking skills, and helping students keep things in perspective.

#### Beginning the Conference

At the beginning of each conference, I try to figure out what the student wants from the conference and I praise the student, as appropriate, for requesting the conference.

12. See, e.g., Mark Broida, *Balancing Power in Student Conferences*, *The Law Teacher* (Fall 1997), available at <<http://www.law.gonzaga.edu/Programs/Institute+for+Law+School+Teaching/The+Law+Teacher+-+Newsletter/Past+Issues+of+The+Law+Teacher/Fall+1997/Blancing.htm>> (last visited Apr. 3, 2006); Kissam, *Conferring with Students*, *supra*, note 1, at 277-29; Wellford, *The Law School Student-Faculty Conference*, *supra* note 1, at 277-347.

### Determining the Purpose of the Conference

My post-exam memo says that the purpose of exam conferences is “to help [the student] identify mistakes or gaps in [his or her] substantive knowledge or exam-taking strategies.” I explained above why I believe that exam conferences can serve this purpose. In reality, however, students sometimes seek exam conferences for other purposes. Some purposes I consider valid, others I do not. For example, some students want to tell me why they messed up the exam—e.g., because of unexpected outside demands on their time at the end of the semester—and want reassurance that I do not judge them harshly for it. Other students make it clear from the outset that they want to argue about their grades. By asking students their purpose, I can make the conference as efficient and useful as possible and can altogether avoid conferences that, in my view, don’t serve a valid purpose.

### Praising Students for Requesting Conferences

Regardless of the student’s reason for requesting a conference, I tell every student who comes for an exam conference that I admire him or her for requesting it. I do so mainly because, based on my experience as a law student and now a professor, I really believe it takes courage to ask for an exam conference. Furthermore, by expressing my admiration for the student’s courage, I hope to neutralize the fear that many students seem to have about taking up too much of their professor’s valuable time.

When a student wants the conference to discuss the scoring of the exam or exam-taking strategies, I also praise the student for being willing to look beneath the surface of the grade and figure out what went wrong. I tell the student that his or her request for a conference shows an admirable willingness to confront a disappointing result. I also say that one of the best ways to learn how to write effective exams is to look inside the black box of the exam grading process and, after gaining some understanding of that process, to work backwards towards—to “reverse engineer”—strategies for writing exam answers that maximize the student’s score.

The praise somewhat neutralizes the negative feelings (akin to going to the principal’s office during his or her primary education) that the student probably associates with exam conferences. This helps the exam conference fill the purpose for which the student has requested it. In addition (and more Machiavellian), praise can disarm the student who comes to the conference with the covert purpose of arguing about his or her grade.

### Conducting Conferences in Which a Student Has Questions about the Scoring of the Exam or Questions about Exam-Taking Skills

#### Conferences about the Scoring of a Student’s Exam

Sometimes when I ask students why they requested the conference, they make it clear they have questions about how I scored the exam. Under the checkout system, their questions almost always concern specific items on the

scoring sheet. Most of these questions ultimately concern the substance of the law, or at least I treat them as such. For example, when a student asks why he or she did not get full credit for an answer, I explain how the question should have been analyzed. If the student follows up by asking how his or her analysis differed from the one that I was “looking for,” I explain how I interpreted the student’s analysis as inaccurate or incomplete. I do not regard queries like this as attempts to argue about a grade. I regard them as legitimate student requests for an explanation of the grade.<sup>13</sup> In contrast, I consider a student to be arguing about the grade when the student complains about matters such as the number of points allocated to a question or the number of points I deducted for inaccuracies or omissions in the analysis. If a student gets into those matters, I tell the student that I won’t discuss them. This makes for some very short conferences.

### Conferences about Exam Taking Skills

When asked what they want from the conference, some students say they have no questions about the scoring of the exam; they just want advice on how to do better. Before offering advice, I usually ask these students why they think they got a disappointing grade. In response, students sometimes offer information that I did not know, such as information about outside events that prevented them from spending enough time studying. Sometimes too, a student identifies problems that she or he had on other exams.

I often end up agreeing, at least in part, with a student’s own assessment of the reason for poor exam performance. I do not affirm the student’s opinion gratuitously. On the other hand, I believe that students feel empowered to the extent that the professor confirms the student’s own assessment. I also believe that, especially when students have twenty-four hours to review their exam and the background material that I provide, they often have better insight into their performance than I do.

Students do not always accurately diagnose poor exam performance. Sometimes, for example, a student mistakenly thinks that his or her only problem is poor exam-writing ability when, in reality, the student didn’t learn the material very well. This and other common reasons for poor exam performance have been astutely identified by Dean Kent Syverud. Syverud lists those reasons as follows: not knowing the material; missing major issues; regurgitating facts and law; failing to make the analysis explicit; failing to acknowledge counterarguments; and not employing common sense at the last stage. In addition to drawing from this checklist, I emphasize to students, if appropriate, the ways in which my exams differ from those of my colleagues. As Syverud says, “Professors are different. Examinations are different.”<sup>14</sup>

13. Association of American Law Schools, Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities, 2005 AALS Handbook, at 92 (“A student who so requests should be given an explanation of the grade assigned.”).

14. Kent D. Syverud, Taking Law School Examinations, Nov. 6, 1992, at 1, 2 (unpublished

As for solutions, I usually tell students, "Practice, practice, practice." I urge them to practice writing answers to exam-type questions in each course, ideally using their professors' old exam questions, and to get feedback on their written answers.<sup>15</sup> This is not, however, the solution for every student. Some need sustained tutoring in substance or writing skills. I make suggestions about what they need and give them what I can.

#### Helping Students Keep Things in Perspective

Most law students don't request exam conferences lightly. Accordingly, law professors should treat the conferences seriously. In particular, professors do students no favor by telling them not to take their grades too seriously. Professors can, however, help the student keep exams in perspective. I have found several things useful to this end.

First, I try to convey to the student that I separate the exam from the student. The exam represents the student's work on one particular day on one particular project. To emphasize the distinction between the student and the exam, when explaining how I scored a student's exam, I refer to the exam's analysis, rather than the student's. For example, I say, "The answer to Question 2 didn't demonstrate an understanding of all the relevant factors for analyzing personal jurisdiction," instead of "*You* didn't demonstrate an understanding... [etc.]." I don't grade students; I grade exams.

In addition to separating the student from the exam, I separate the exam from learning. Law school final exams are a deeply flawed method of assessing what they have learned. I admit this when I think my admission would help a student. For example, sometimes I am sure a student has muffed an exam because that student takes a methodical approach to analysis instead of a rapid-fire one. That student may know already that he or she will find it hard to shine on a time-restricted final exam. Even so, the student may benefit from my "officially" confirming it. Furthermore, I can advise the student on ways to reduce the disadvantage that final exams cause methodical thinkers.

Finally, I try to give students perspective on the limits of even perfect assessment tools. I remind them that three essential qualities of a great lawyer are compassion, integrity, and a social conscience, none of which can be easily taught in a conventional classroom or tested by a law school exam. I remind them that the worth of a person is not limited to his or her professional success. I believe law students should realize that people can and do pass up the chance to become a good person so they can focus on becoming a successful

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handout) (on file with the author). Nickles, *Examining and Grading at American Law Schools*, *supra* note 1, at 444 ("Unreliability of [law school] essay tests results from scorers having different conceptions of which elements are important in answers and from contrary opinions on whether students' answers adequately have touched upon and dealt with those elements.") (footnote omitted).

15. See Philip C. Kissam, *Law School Examinations*, 42 *Vand. L. Rev.* 433, 434 (stressing the value of giving law students practice writing answers to exam-type questions).

lawyer. Some straight-A law students become successful lawyers whose lives are failures.

### **Conclusion**

This article suggests that law school exam conferences can be lighter and more enlightening than most are now. Making them so requires attention to their costs and benefits with an eye toward minimizing costs and maximizing benefits. Although the main costs are obviously the time and energy that professors and students put into them, some of the costs and associated benefits are not frankly acknowledged. I believe law students should realize that people can and do pass up the chance to become good people so they can focus on becoming successful lawyers. Those costs carry benefits—namely, the appearance and reality of accuracy in exam scoring—that, when acknowledged, make it plain that the costs are not extraneous to, but rather at the core of, our professional responsibilities.

The article also describes my approach to exam conferences. In sum, my approach divides the traditional scenario—in which the teacher and student pore over the exam together—into a two-stage process, in which I review the student's exam to ensure that its scoring is accurate and comprehensible before giving it to the student to review on his or her own during a twenty-four hour checkout period. I believe my approach makes the review process more enlightening and the exam conferences less leaden than the traditional scenario.